

LEGAL HANDBOK:

A guide to survivors and practitioners on laws against domestic violence in Tamil Nadu









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ACRONYMS AND ABBREVIATIONS

&	And
ADCP	Additional Commissioner of Police
AIR	All India Reporter
AfCHPR	African Court on Human and Peoples' Rights
Anr.	Another
CAWC	Crimes Against Women and Children
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CPC	Civil Procedure Code, 1908
Cr Cases	Criminal Cases
CrPC	Code of Criminal Procedure, 1973
CSR	Community Service Register
DIR	Domestic Incidence Report
DLSA	District Legal Services Authority
DMM Act	Dissolution of Muslim Marriage Act, 1939
DV Act	Protection of Women from Domestic Violence Act, 2005
DV Rules	Protection of Women from Domestic Violence Rules, 2006
DP Act	Dowry Prohibition Act, 1961
DPO	Dowry Prohibition Officer
EBC	Eastern Book Company
ECHR	European Court of Human Rights
EVAW	Ending Violence Against Women
FAQ	Frequently Asked Question
FIR	First Information Report
FM Act	Foreign Marriage Act, 1969
GBV	Gender-based Violence
Gov	Government
HAM Act	Hindu Adoption and Maintenance Act, 1956
НС	High Court





HM Act	Hindu Marriage Act, 1955
HMG Act	Hindu Minority and Guardianship Act, 1956
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICM Act	Indian Christian Marriage Act, 1872
IT Act	Information Technology Act, 2000
IPC	Indian Penal Code, 1860
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer / Questioning, Intersex, Asexual / Aromantic and other identities
MPLA Act	Muslim Personal Law (Shariat) Application Act, 1937
MTP Act	Medical Termination of Pregnancy Act, 1971
MWPRD Act	Muslim Women (Protection of Rights on Divorce) Act, 1986
NCT	National Capital Territory
NCW	National Commission for Women
NGO	Non – Governmental Organisation
No.	Number
NRI	Non-Resident Indian
OCI	Overseas Citizens of India
OSC	One Stop Centre
Ors.	Others
PCVC	International Foundation for Crime Prevention and Victim Care
PIB	Press Information Bureau
PMD Act	Parsi Marriage and Divorce Act, 1936
POCSO Act	Protection of Children from Sexual Offences Act, 2012
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SCW	State Commission for Women
SM Act	Special Marriage Act, 1954





TNDP Rules	Tamil Nadu Dowry Prohibition Rules, 2004
UDHR	Universal Declaration of Human Rights, 1948
UNGA	United Nations General Assembly
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
Uol	Union of India
UP	Uttar Pradesh
WP	Writ Petition





CONTENT WARNING

The content in this handbook engages with the issues of domestic violence, dowry, rape, sexual harassment, acid attacks and other forms of gender-based violence and intimate-partner violence prevalent in India. This can be emotionally and intellectually challenging and may be difficult to engage with for some readers. If you think this might upset or trigger you, we encourage you to avoid reading further and attend to your well-being.

ABOUT THE HANDBOOK





Introduction

A study published in the Journal of Epidemiology & Community Health (JECH) in 2020 reveals that while one in three women in India experience domestic violence, only one in ten women had reported the violence to the police or a healthcare professional. This Handbook is one of the several outcomes of a UN Women Project on Strengthening Response and Service Provisioning for GBV in Tamil Nadu (2022) with a specific focus on 'Gender-Responsive COVID-19 Recovery in India', to reduce the disproportionate gender-based risks and negative impact of COVID-19 on women, including those who are the most marginalised and in particularly vulnerable situations.

As part of the larger UN Women project, PCVC was engaged to develop a 'Handbook on Principles of Survivor-centric Psychosocial Counselling/Specific Laws and Policies on EVAW in Tamil Nadu'. However, considering the immediate needs of survivors of domestic violence, the document was redesigned to result in the following outcomes:

- (a) Handbook on Principles of Survivor-centric Psychosocial Counselling, and
- (b) Handbook on Specific Laws and Policies against Domestic Violence in Tamil Nadu: A Guide for Survivors and Practitioners; and
- (c) Survivor Support Services Directory

Scope

This Handbook addresses the connected legal themes of domestic violence, intimatepartner violence and gender-based violence including but not limited to sexual offences, dowry harassment and cyber-crimes arising out of such violence. The document addresses both substantive legal rights of survivors as well as the redressal

¹Krishnamoorthy Y, Ganesh K, Vijayakumar K, Physical, emotional and sexual violence faced by spouses in India: evidence on determinants and help-seeking behaviour from a nationally representative survey, J *Epidemiol Community Health* 2020;74:732-740.

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process, whether by seeking matrimonial reliefs under matrimonial law or by engaging with the criminal justice system. A brief section on the applicable principles under international law has also been included to address the role of international agencies in combatting domestic violence. It is pertinent to note that all the questions in this Handbook have been formulated based on discussions with domestic violence survivors and service providers who work with the survivors.

The goals of this document are to:

- (i) increase the awareness of legal rights,
- (ii) increase understanding of legal remedies available to enforce such rights,
- (iii) increase the accessibility of such legal remedies
- (iv) enable survivors to make an informed decision while engaging with the legal system.

The document adopts the non-technical language and addresses only key themes aimed at simplifying the law. Specific scenarios have been addressed in the form of FAQs and fact boxes have been included to overcome common misconceptions.

Usage

The document is specifically aimed at creating a legal guide for survivors and service providers in Tamil Nadu. However, as several of the laws covered here are applicable pan-India, the information provided can be utilised throughout the country, unless specified otherwise in the relevant section. The document can also be utilised by friends and family of survivors, civil society organisations and others who wish to be better informed while assisting survivors.

Please Note

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- i. The information contained in this Handbook is only aimed at providing a broad overview of the covered topics and aiding a general understanding of the issues. This information does not constitute legal advice and should not be depended upon for that purpose. If you have a specific legal problem or question, please consult a lawyer. Readers must bear in mind that each case may require a different approach, unique to the specific facts and circumstances of the individual, and there is no single straightforward approach to all issues.
- ii. While the authors have attempted to cover a wide range of laws and scenarios, this is not an exhaustive document and there may be more such information.
- iii. It is important to bear in mind that the law is dynamic and may at any time render the information in this document obsolete. The Courts referred to in these articles may also change their procedures, services, hours of operation, etc., at any time. Therefore, it is always advisable to consult a local lawyer who is aware of the latest developments.

About UN Women

The United Nations Entity for Gender Equality and the Empowerment of Women (hereinafter, "UN Women") is a global champion for women and girls, established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to ensure that the standards are effectively implemented and truly benefit women and girls worldwide. It works globally to make the vision of the Sustainable Development Goals a reality for women and girls and stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic





empowerment; and making gender equality central to national development planning and budgeting.

About PCVC

Founded in 2001, the International Foundation for Crime Prevention and Victim Care (PCVC) is a public charitable trust and non-governmental organisation, aimed at creating and extending support services to women affected by domestic and interpersonal violence. Over the years, the organisation has evolved to provide both emergency and long-term rehabilitative support through residential services for women, queer individuals and children, counselling and emotional support, financial support, education, skill-building and employment opportunities leading to economic freedom. Being a rights-based organisation, PCVC strongly believes in a survivor-centric approach where clients drive the process of rehabilitation and make all decisions regarding their life with the unconditional support of a team of social workers, psychologists and welfare officers. Their crisis intervention services include interfacing with the police, devising safety plans, leaving abusive homes, negotiating with families, and providing legal and medical referrals.





LAW ON PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

A. OVERVIEW OF THE APPLICABLE LAWS

The Protection of Women from Domestic Violence Act, 2005 (DV Act, 2005) and Protection of Women from Domestic Violence Rules, 2006 (DV Rules, 2006) were enacted to provide effective protection of the rights of women guaranteed under Articles 14, 15, & 21 of the Constitution and to protect women from violence of any kind occurring within the family or from a partner with whom the woman was living together in a relationship in the nature of marriage.²

To create more awareness on the law relating to domestic violence, this section aims to provide insights into what domestic violence is and the reliefs or remedies available to an aggrieved person under the DV Act, 2005 and the DV Rules, 2006.

Disclaimer

The information provided in the section is only to provide some basic legal information about the law relating to domestic violence to the readers. The application of laws and procedures may differ from one court to another. Please consult a lawyer for any doubts or clarifications you may have.

² Statement of Objects and Reasons, Domestic Violence Act, 2005



Please Note

- i. Aggrieved person means the woman who is/has been in a domestic relationship with the Respondent and who has faced, or is facing, domestic violence.
- ii. Respondent means the person against whom the aggrieved person files a case for domestic violence, and includes the relative of the husband or male partner.

B. WHAT IS DOMESTIC VIOLENCE?

Domestic violence can be in the form of physical abuse, sexual abuse, verbal abuse, emotional abuse or economic abuse.³

a. Physical abuse

Physical Abuse means any act or conduct which

- i. Causes bodily pain, harm or injury to life, safety, well-being or limb
- ii. Impairs the health or development of the aggrieved person
- iii. Causes injury or harm with a view to force the aggrieved person to meet unlawful demand for dowry
- iv. Includes assault, criminal intimidation, and criminal force.

<u>Examples:</u> Using a weapon to threaten or hurt, strangulation, forcing to consume drugs, slapping, kicking, etc.

b. Sexual abuse

Sexual Abuse means any conduct of sexual nature which abuses (or) humiliates (or) degrades (or) otherwise violates the dignity of a woman

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³ Section 3, Domestic Violence Act, 2005; Form IV, Domestic Violence Rules, 2006



<u>Examples:</u> Any sexual activity without the consent of the aggrieved person, demanding sex when the aggrieved person is tired or sick, forcing the aggrieved person to watch pornography, child sexual abuse, etc.

c. Verbal and emotional abuse

Verbal and emotional abuse means:

- i. Insults (or) ridicule (or) humiliation (or) name calling especially with regard to not having a child or a male child
- ii. Repeated threats to cause physical pain to the aggrieved person or any person in whom the aggrieved person is interested or related

<u>Examples:</u> Humiliation or ridiculing or nagging for not having children or male children, threatening to take children away, threatening to commit suicide, forcing the aggrieved person to leave a job etc.

d. **Economic abuse**

Economic abuse means:

- Depriving the aggrieved person of all or any economic and financial resources like stridhan, household necessities, jointly or individually held properties, payment of rent, or maintenance of the shared household.
- ii. Restricting access to the shared household or other resources which an aggrieved person is entitled to use or enjoy by virtue of the domestic relationship.
- iii. Alienation of stridhan or any other property jointly or separately held by the aggrieved person including assets in which
 - the aggrieved person has an interest (or)





- the aggrieved person is entitled to use by virtue of the domestic relationship (or)
- may be reasonably required by the aggrieved person or her children

<u>Examples:</u> Not providing food, clothes or medicine, forcibly taking away salary, non-payment of rent in case of rented accommodation, etc.

Please Note

An aggrieved person can file a domestic violence complaint against the Respondent only if they are in a domestic relationship (or) were in a domestic relationship at the time of domestic violence.

Domestic Relationship

A domestic relationship is a relationship between two persons who live or have, at any point of time, lived together in a shared household. The relationship can be through ⁴

- i. Consanguinity- <u>Example</u>: Mother-son or sister-brother or daughter-father
- ii. Marriage- <u>Example</u>: Wife-husband or daughter in law father-in-law or daughter in law mother-in-law
- iii. Adoption and step relations- <u>Example</u>: stepbrother, adopted daughter-father
- iv. Relationship in the nature of marriage <u>Example</u>: Long-term live-in relationships, invalid marriage, irregular marriage

Shared Household

⁴ Section 2(f), Domestic Violence Act, 2005



Shared household means a household where the aggrieved person lives or has lived in a domestic relationship either singly or with the Respondent. It includes a house: ⁵

- i. owned or tenanted jointly by the Respondent and aggrieved person; or
- ii. owned or tenanted by either of them; or
- iii. a household which may belong to the joint family of which the Respondent is a member (The Respondent or aggrieved person need not have any right, title or interest in such a shared household).

Please Note

An aggrieved person can file a domestic violence complaint against the Respondent even if they don't reside in a shared household as long as they are in a domestic relationship (or) were in a domestic relationship at the time of domestic violence.⁶

FAQs

1) My husband is not letting me leave the house or meet my family members. Does this constitute domestic violence?

Yes. The husband not letting his wife leave the house or meet her family members is considered emotional abuse and therefore is domestic violence.⁷

2) My husband and my in-laws are not allowing me to go to work. Does this constitute domestic violence?

Yes. Not allowing a person to go to work is both emotional and economic abuse and therefore is domestic violence.⁸

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⁵ Section 2(s), Domestic Violence Act, 2005

⁶ Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90

⁷ Form I, Domestic Violence Rules, 2006

⁸ Form I, Domestic Violence Rules, 2006



3) Can I file a case of domestic violence if the act of violence happened outside my household?

- Yes. You can file a complaint if the act of violence happened outside your household. An act of domestic violence can happen anywhere like your relative's house, your child's school, your place of work etc.
- A recent Supreme Court judgment clarified that even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under the DV Act, 2005 but has at any point of time lived and been subjected to domestic violence on account of the domestic relationship, she is entitled to file an application under Section 12 of the D.V. Act.⁹
- 4) My husband and I live in a joint family. The house is owned by my mother-inlaw. The act of domestic violence happened in that house. Can I file a complaint against my husband and mother-in-law?

Yes. Since you have a domestic relationship with the Respondents (husband and mother-in-law), you can file a complaint of domestic violence against them.

5) The conduct of my sister-in-law amounts to domestic violence. But she doesn't live in the same household as I do. Can I still file a complaint of domestic violence against her?

Yes. Recently, the Supreme Court of India has declared that it is not necessary for the aggrieved person to have resided with the Respondent as long as they have

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⁹ Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90



a domestic relationship.¹⁰ Since the Respondent is the sister-in-law, there is a domestic relationship arising out of marriage and a complaint of domestic violence can be filed against her.

6) My husband rapes me every day. I am told that marital rape is not an offence under the law. Can I file a complaint under domestic violence?

Marital rape is still not a crime under the IPC¹¹ but it amounts to sexual abuse and therefore is domestic violence. So, you can file a complaint under the DV Act, 2005 even if no action can be taken under the IPC, 1860.

7) My parents are forcing me to get married to my uncle in the name of family tradition. Is this domestic violence?

Depending upon the facts of your case, the acts of your parents may amount to physical or emotional abuse and therefore it could constitute an offence of domestic violence.

C. WHO CAN FILE A COMPLAINT? & AGAINST WHOM CAN A COMPLAINT BE FILED?

The following persons can file a complaint under the DV Act, 2005

i. The aggrieved person - Any woman can be an aggrieved person under the law.

<u>Examples</u>: Wife, female live-in partner, daughter-in-law, sister-in-law, daughter (including step or adoptive)¹²

ii. Any person on behalf of the aggrieved person

¹⁰ Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90

¹¹ Please see <u>here</u>

¹² Section 2(a), Domestic Violence Act, 2005



iii. Any person who has reason to believe that domestic violence is being or is likely to be committed¹³ (*Note: This person can complain only to the Protection Officer*)

A complaint can be filed against one or more Respondents

The Respondent can be any person (male or female).

Examples: Husband, Brother-in-law, Mother-in-law

However please keep in mind that the aggrieved person should be or should have been in a domestic relationship with the Respondent.¹⁴

FAQs

8) Can a husband file a domestic violence case against the wife?

No. Only a woman can file a case of domestic violence.

9) Can I file a domestic violence case against my parents?

Yes, a domestic violence case can be filed against any person, including your parents.

10) Can a mother-in-law file a domestic violence case against her daughter-in-law?

Yes, if the mother-in-law faces domestic abuse by the daughter-in-law, she can file a case against the daughter-in-law if they are or were in a domestic



¹³ Section 4, Domestic Violence Act, 2005

¹⁴ Section 2(q), Domestic Violence Act, 2005



relationship when domestic violence took place. Please note that a mother-in-law cannot file a case against her daughter-in-law for any abuse meted out to her son.

11)To what extent can people in live-in relationships get protection under the DV Act, 2005?

- Women living in a 'relationship in the nature of marriage' can avail protection under the DV Act, 2005. ¹⁵
- Courts take into account different guiding factors to determine whether the live-in relationship is 'relationship in the nature of marriage'. In general, it means a relationship which has some inherent or essential characteristics of a marriage, though not legally recognised as a marriage. 16

The guiding factors are as follows:

- a) Duration of relationship: Living together for a reasonable period of time. The parties must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
- b) Shared household: The parties must have lived together in a "shared household" as defined in Section 2(s) of the DV Act, 2005.
- c) Financial arrangements: Supporting each other or any one of them financially, sharing bank accounts, acquiring immovable properties in joint names, longterm investments in business, etc.



¹⁵ Section 2(f), Domestic Violence Act, 2005

¹⁶ Indra Sarma v. VKV Sarma, (2013) 15 SCC 755



- d) Domestic arrangements: Entrusting the responsibility, especially to the woman to run the home and do the household activities like cleaning, cooking, maintaining or up-keeping the house, etc. is an indication of a relationship in the nature of marriage.
- e) Sexual relationship: Sexual relationship not just for pleasure but for an emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc. Merely spending weekends together or a one-night stand would not make it a "domestic relationship". At the same time, if a man has a "mistress" whom he maintains financially and uses mainly for sexual purposes and/or as a servant, it is not a relationship in the nature of marriage.
- f) Children: Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship.
- g) Socialisation in public: Holding out to the public as being akin to spouses and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.
- h) Intention and conduct of the parties: Common intention of parties as to what their relationship is and as to their respective roles and responsibilities primarily determines the nature of that relationship.
- i) Qualified to enter into a legal marriage: They must otherwise be qualified to enter into a legal marriage i.e., they must be unmarried and must be of legal age to marry.¹⁷



¹⁷ Indra <u>Sarma v. VKV Sarma, (2013) 15 SCC 755; D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469</u>



12)I am legally married to A. However, I have been in a live-in relationship with my male partner B for the last 1 year. Can I file a case of domestic violence against B?

No. Since you are not qualified to enter into a legal marriage with B, you cannot claim protection under the law. However, if the act amounts to any offence under the IPC, 1860 you may file a criminal complaint for the same.

13)I saw a husband slapping a wife in a hotel in the middle of a heated argument. I complained to the Protection Officer. The husband threatens to file a case against me. Can I be prosecuted?

No, a case cannot be filed against you. Any person who has complained to the Protection Officer in good faith that domestic violence has taken place or is likely to take place will not incur any liability. ¹⁸

14) My husband and I are citizens of a foreign country and are Overseas Citizens of India (OCI). I am temporarily residing in India now. Can I file a domestic violence case against my husband in India?

Yes, you can file a case against your husband in India since the DV Act, 2005 applies to foreign citizens as well.¹⁹ However, please bear in mind that the aggrieved person/Respondent should either temporarily reside/carry on business in India (or) the incidents of domestic violence should have taken place in India.

D. WHEN CAN THE COMPLAINT BE FILED?

¹⁹ Robarto Nieddu v. State of Rajasthan and Ors., Criminal Miscellaneous Petition No. 4666/2021 (Rajasthan High Court); Kiran Kumar Chava v. Usha Kiran Anne, Criminal Revision Petition Nos. 3586 & 4156 of 2022 (Madras High Court)

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¹⁸ Section 4, Domestic Violence Act, 2005



- i. A complaint can be filed by the aggrieved person if she faces or has faced domestic violence or is likely to face domestic violence.
- ii. The complaint can be filed anytime, provided the aggrieved person and the Respondent are or were in a domestic relationship at the time of domestic violence.

FAQs

15) Is there any limitation period to file a complaint of domestic violence?

There is no specific time limit for filing a complaint of domestic violence.²⁰ However, if there is a delay in complaining about the domestic violence that you have faced, you might be asked to explain the reasons behind the delay.

16) Can I file a case of domestic violence after judicial separation?

Yes, you may file a domestic violence case even after being judicially separated provided the aggrieved person and the Respondent were in a domestic relationship at the time of domestic violence.²¹ It was also held in the case of *Anita v. Shri Anand*²² that even if a woman was subject to domestic violence before her marriage was dissolved, filing a case after 27 years would amount to abuse of the law.

17) Can I file a case of domestic violence if I am divorced?

Yes, you can file a case of domestic violence after you are divorced.

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²⁰ <u>Vikas and Ors. v. Usha Rani and Ors., Criminal Revision Petition No. 3084 of 2016 (Punjab-Haryana High</u> Court); Kamatchi v. Lakshmi Narayanan, AIR 2022 SC 2932

²¹ Krishna Bhatacharjee v. Sarathi Choudhury, (2016) 2 SCC 705

²² Anita v. Shri Anand (Nagpur Bench), (2018) 3 Mh LJ (Crl) 360



- Domestic violence before divorce: If you've faced domestic violence before
 the divorce and you were in a domestic relationship at the time of domestic
 violence, you can file a complaint ²³
- Domestic violence after divorce: If you are facing domestic violence after divorce, you can file a complaint if the domestic violence is relatable to the period of domestic relationship. The domestic relationship need not be subsisting at the time of filing the complaint ²⁴

18)I got married in 2004 and my husband has been abusing me since then. Can I file a complaint against my husband for acts of domestic violence committed before 2005?

Yes. Though the law on domestic violence came into force in 2005, you can file an application for relief and/or protection even for any domestic violence that took place before 2005. ²⁵

19)Can I claim for maintenance under the DV Act, 2005 even though I am already receiving some amount as maintenance?

Yes, you may claim additional maintenance under this Act. However, any previous or pending litigation should be duly informed in the application before the Magistrate.²⁶

20) Can I seek the reliefs mentioned under the DV Act, 2005 in proceedings for maintenance or divorce or criminal case that is pending before another court?
Yes, reliefs mentioned under the DV Act, 2005 may be sought before the civil court or family court or criminal court if any other case between the aggrieved

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²³ Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, (2014) 10 SCC 736

²⁴ Prabha Tyagi v. Kamlesh, (2022) 8 SCC 90

²⁵ V.D.Bhanot v. Savita Bhanot, (2012) 3 SCC 183

²⁶ Section 26(3), Domestic Violence Act, 2005



person and Respondent is pending before such court. ²⁷ Thus, in practice, the same court may hear your divorce case as well as your DV case.

Please Note

If any such relief has been obtained in any other proceedings, the same should be duly informed to the Magistrate. ²⁸

21)Can I also file a criminal complaint in addition to a complaint under the DV Act, 2005?

Yes. You can file a criminal complaint on the same facts in addition to a complaint under the DV Act, 2005.

22) Can a person file a case of Domestic Violence after injuring themself (or) causing self-harm?

Though an injury inflicted on oneself is not an act of domestic violence, if the injury was inflicted as a result of verbal or emotional abuse, it could constitute an act of domestic violence, depending on the facts of the case.

23) The magistrate, being satisfied that the Respondent committed an act of domestic violence, ordered the Respondent to pay compensation. A criminal case was pending against the Respondent on the same facts. The Respondent was subsequently acquitted in the criminal proceedings. Can the Respondent claim the compensation back?

No. The compensation awarded under the DV Act, 2005 is for sufferings already undergone by the aggrieved person after assessing the facts and circumstances of the case. Hence, any order in the criminal proceedings will not affect the order passed by the Magistrate.



²⁷ Section 26(1), Domestic Violence Act, 2005

²⁸ Section 26(3), Domestic Violence Act, 2005



E. WHERE CAN THE COMPLAINT BE FILED AND WHAT HAPPENS AFTER THE COMPLAINT IS FILED?

A complaint may be filed before the:

- Protection Officer or Service Provider It shall be the duty of the Protection
 Officer to make a domestic incident report to the Magistrate or make the
 requisite application for issuance of a protection order.²⁹
- ii. Police Station
- iii. National or State Commission for Women
- iv. Magistrate

i. Complaint filed before the Protection Officer or Service Provider

- A Protection Officer is the first point of contact in domestic violence cases.
 You may also approach a service provider recognised under the DV Act,
 2005.
- You can give a complaint of domestic violence orally or in writing. If lodged orally, the complaint will be written down and you will be given a copy of the complaint free of cost.³⁰
- The Protection Officer or the service provider will then prepare a domestic incident report.



²⁹ Section 9, Domestic Violence Act, 2005

³⁰ Rule 4, Domestic Violence Rules, 2006



- The Protection Officer or service provider will forward a copy of the domestic incident report to the local police station, the aggrieved person and the Magistrate. ³¹
- The Protection Officer is also duty bound to:
 - a) make an application to the Magistrate claiming relief for issuance of a protection order;
 - b) ensure legal aid services are provided;
 - c) make available a shelter home,
 - d) facilitate medical examination, if necessary. 32

ii. Complaint filed before the Police Station

- If you are unable to locate the Protection Officer, you can approach the
 police station in your area. The police station will direct you to the
 concerned Protection Officer and assist the Protection Officer in preparing
 the domestic incident report.
- If the information reveals any criminal offence committed by the Respondent, the police officer will ask you if you wish to initiate criminal proceedings against the Respondent. If yes, the police officer will lodge an FIR against the Respondent (For more information on FIR, please see here). However, if you don't want to pursue criminal proceedings, the police will make a diary entry on the basis of the information received and conduct an appropriate enquiry before registration of FIR.³³



³¹ Rule 5, Domestic Violence Rules, 2006

³² Section 9, Domestic Violence Act, 2005 r/w Rule 5, Domestic Violence Rules, 2006

³³ Form I, Domestic Violence Rules, 2006



iii. Complaint before the National Commission for Woman or State Commission for Women³⁴

The NCW is a national-level government organization that is empowered to investigate complaints related to issues faced by women, such as domestic violence, dowry harassment, rape, etc. The NCW will help you by:

- Monitoring and expediting the investigations being led by the police.
- Providing counselling or a hearing before the NCW, so that the dispute can be resolved between the two parties.
- Constituting an Inquiry Committee which makes spot inquiries, examines witnesses, collects evidence, and submits the report with recommendations regarding domestic violence.

You can get in touch with them by either calling the helpline number 1091, or sending an email to ncw@nic.in or filing an online:omplaint. However, the NCW is located in New Delhi, and if you live in another state, you can approach the State Commission for Women situated in your state, and ask them for help. Tamil Nadu, you can approach the <a href="mailto:namilto:na

Please Note

i. After filing a complaint before the Protection Officer (or) service provider an application should be filed before the Magistrate. Please try and collect as much evidence as possible before filing an application before the Magistrate as it will help you strengthen your case.



³⁴ Complaint & Investigation Cell | National Commission for Women (ncw.nic.in)

³⁵ https://nyaaya.org/legal-explainer/how-can-you-file-a-complaint-against-domestic-violence/



ii. If you want to receive immediate protection, you can also directly file an application before the Magistrate prior to filing a complaint before the Protection Officer or the service provider.

iv. Application before the Magistrate:

- An application can be filed before the Magistrate as given in Form II of the DV Rules, 2006. (Please see <u>Appendix II)</u>
- The Magistrate should be within the local limits of which ³⁶
 - a) the aggrieved person permanently or temporarily resides or carries on business or is employed; or
 - b) the Respondent resides or carries on business or is employed; or
 - c) Wherever the act of Domestic Violence took place

Please Note

You can seek the help of the Protection Officer in filing a complaint before the magistrate. A Protection Officer can also file the application before the Magistrate on your behalf.

FAQs

24) Is filing a domestic incident report mandatory before filing an application before the Magistrate?

No. It is not mandatory. A person may directly file an application before the Magistrate without a domestic incident report i.e., before approaching the Protection Officer or Service Provider or Police Station.³⁷

³⁷ Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90

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³⁶ Section 27, Domestic Violence Act, 2005



25) Is an aggrieved person entitled to legal aid?

Yes, an aggrieved person is entitled to legal aid. The Protection Officer and service provider have a duty to ensure that the aggrieved person is provided with legal aid through State Legal Aid Services Authority.³⁸

Please Note

You have the right to approach any other lawyers, too.

26) Can I be denied shelter home or medical facilities for not having lodged a domestic incident report?

No. The shelter home or medical facility cannot refuse to provide assistance because of not having lodged a domestic incident report. 39

27) Can I file the complaint under DV Act, 2005 and also take support from any service provider?

Yes, there is no bar for you in taking any help from any service provider before, during or after filing a complaint under the DV Act, 2005.

28) Will the shelter home refrain from disclosing my place of stay to the **Respondent?**

Yes. If the aggrieved person desires, the shelter home shall not disclose the whereabouts of the aggrieved person to the Respondent.⁴⁰

29) What is a Domestic Incident Report?

A Domestic Incident Report is provided for in the statue, 41 with the details being provided in Form I of the DV Rules, 2006 (Please see Appendix I). It contains

³⁸ Rule 8(1)(v), Domestic Violence Rules, 2006; Section 9(d), Domestic Violence Act, 2005

³⁹ Rule 16, Domestic Violence Rules, 2006; Rule 17, Domestic Violence Rules, 2006

⁴⁰ Rule 16(3), Domestic Violence Rules, 2006

⁴¹ Section 9(b) and 37(2)(c) of DV Act r/w Rules 5(1) and (2) and 17(3), DV Rules



information such as details of the aggrieved person and Respondent(s), their relationship, details of children (if any), address of the shared household, type of domestic violence, reliefs sought and assistance needed, etc.⁴²

30) How will the Protection Officer help me after I report Domestic Violence?

- The Protection Officer will inform you of your rights and create a safety plan which will specify the course of action to ensure your safety. 43
- In case you or your child have sustained any injury, the Protection Officer will
 ensure that you are medically examined and treated.⁴⁴ The medical facility will
 prepare a medical report and you are entitled to a copy of the same free of
 cost.⁴⁵
- The Protection Officer will ensure that you and your children have a safe shelter and have transportation to reach the shelter.⁴⁶
- The Protection Officer will also help you file an application before the magistrate or directly file an application before the magistrate.

To know more about your rights, please see Appendix III⁴⁷

F. WHAT HAPPENS AFTER AN APPLICATION IS FILED BEFORE THE MAGISTRATE?

On receipt of the Application mentioned above:

⁴² Form I, Domestic Violence Rules, 2006

⁴³ Rule 8(ii), Domestic Violence Rules, 2006; Rule 8(iv), Domestic Violence Rules, 2006

⁴⁴ Rule 8(vi), Domestic Violence Rules, 2006

⁴⁵ Rule 17(4), Domestic Violence Rules, 2006

⁴⁶ Section 9(f), Domestic Violence Act, 2005; Rule 8(vii), Domestic Violence Rules, 2006

⁴⁷ Form IV, Domestic Violence Rules, 2006



- The Magistrate will direct the Protection Officer to issue notice to the Respondent. The Protection Officer shall get it served on the Respondent within 2 days of the receipt of the court direction.⁴⁸
- ii. If the situation is urgent and on an application being made by the aggrieved person, the Magistrate may also pass an interim order before giving notice to the Respondent.
- iii. The Magistrate may, at any stage of the proceeding, refer the dispute for counselling. The counselling shall be completed within 2 months. ⁴⁹
- iv. If a settlement is reached, the Magistrate may after being satisfied with the efficacy of the solution and after making a preliminary enquiry, accept the terms of the settlement with or without conditions.⁵⁰
- v. In cases where a settlement cannot arrive at counselling, court shall record the same and proceed with the case. ⁵¹
- vi. On hearing both parties, the Magistrate will pass a final order. The Magistrate may also pass interim orders wherever necessary.⁵²
- vii. The Magistrate shall aim to dispose of the case within sixty days from the date of first hearing.⁵³ However, It is best to consult a local lawyer to understand how long it takes for the disposal of each case before the concerned Magistrate.

Please Note

You are entitled to get a free copy of the order passed by the Magistrate.⁵⁴

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⁴⁸ Section 13, Domestic Violence Act, 2005

⁴⁹ Section 14, Domestic Violence Act, 2005

⁵⁰ Rule 14(13), Domestic Violence Rules, 2006

⁵¹ Rule 14(15), Domestic Violence Rules, 2006

⁵² Section 23, Domestic Violence Act, 2005

⁵³ Section 12(5), Domestic Violence Act, 2005

⁵⁴ Section 24, Domestic Violence Act, 2005



Kinds of Orders that can be passed by the Magistrate

The magistrate may pass any one or more than one of the following orders (either as interim/final order):

i) Protection Order⁵⁵

The court may pass an order prohibiting the Respondent from:

- Committing acts of Domestic Violence or abetment to commit Domestic
 Violence
- Entering the aggrieved person's school, college, or workplace or any other place frequently visited by the aggrieved person
- Communication in any form with the aggrieved person or children including personal, oral, written, electronic or telephonic contact
- Alienating assets, operating bank lockers or bank accounts jointly held by the aggrieved person and the respondent (or) singly held by the respondent
- Causing violence to the dependants or relatives or any other person assisting the aggrieved person
- Committing any other act specified in the Protection Order

ii) Residence Order⁵⁶

The court may pass an order restraining the Respondent from:

- Throwing the aggrieved person out of the shared household or denying her
 possession from the shared household, whether or not the Respondent has
 a legal or equitable interest in the shared household.
- Restraining the respondent or any of his relatives from the portion of shared household where the aggrieved person is residing



⁵⁵ Section 18, Domestic Violence Act, 2005

⁵⁶ Section 19, Domestic Violence Act, 2005



- Alienating or disposing or encumbering or renouncing his rights in the shared household
- Renouncing his rights in the shared household except with the leave of the
 Magistrate
- Pass any other directions which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or her child

The court may pass an order directing the Respondent(s) to:

- Remove themselves from the shared household. However, such an order cannot be passed against a woman.
- Secure same level of accommodation to the aggrieved person as the shared household to the aggrieved person and pay rent for the same, if needed.
- Alienating or disposing or encumbering or renouncing his rights in the shared household
- Return Stridhan or any property or valuable that belongs to the aggrieved person.
- Execute a bond, with or without sureties, for preventing the commission of domestic violence.

The court may also pass an order directing the officer in charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order and to give protection to the aggrieved person or to assist her in making an application for the implementation of the order. The court may also impose obligations on the Respondent(s) relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.





iii) Monetary relief⁵⁷

The Court may order monetary reliefs including the relief for:

- Loss of earnings
- Medical expenses
- Loss due to the damage or removal of any property from the control of the aggrieved person
- Any other loss or physical or mental injury
- Food or clothes or medicines or other basic necessities
- School fees or related expenses
- Household expenses
- Maintenance of aggrieved person and their children

It is pertinent to note that the monetary relief shall be adequate, reasonable, fair and consistent with the standard of living of the aggrieved person. The Magistrate may order for a lump sum payment or monthly payments, as the circumstances require.

If you've already claimed maintenance under section 125 CrPC, 1973 or any other applicable law, you can claim maintenance in addition to that as well. But, the same needs to be informed to the court.⁵⁸ While claiming maintenance, it will be useful if you attach some proof for the income of the aggrieved person and Respondent.

iv) Custody order⁵⁹

When the magistrate is hearing an application for protection order or any other relief under the DV Act,2005 may pass an order directing the Respondent to hand over the temporary custody of the child or children to the aggrieved person or the person making an application on her behalf. The court may also specify the arrangements of

⁵⁷ Section 20, Domestic Violence Act, 2005

⁵⁸ Section 26(3), Domestic Violence Act, 2005

⁵⁹ Section 21, Domestic Violence Act, 2005



visit by the Respondent, if necessary. If the magistrate feels the visit of the Respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit by the Respondent.

v) Compensation order⁶⁰

In addition to other reliefs, the Magistrate may also direct the Respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that Respondent.

Please Note

An order made under the DV Act, 2005 is enforceable throughout India.⁶¹

FAQs

31) How to seek immediate protection when I face Domestic Violence?

When filing an application before the Magistrate, you can mention that you require immediate protection. After being satisfied that the Respondent has committed the act of domestic violence or is likely to commit an act of domestic violence, the Magistrate may grant an interim order even before issuing notice to the Respondent.⁶² In some cases, the magistrate may also direct the Protection Officer to conduct a home visit and make a preliminary enquiry if any clarification is required.⁶³

32) Can I appeal against an order passed by the Magistrate?

⁶⁰ Section 23, Domestic Violence Act, 2005

⁶¹ Section 27(2), Domestic Violence Act, 2005

⁶² Section 23, Domestic Violence Act, 2005

⁶³ Rule 10(a), Domestic Violence Rules, 2006



Yes. An appeal may be filed before the Sessions Court against an interim or final order passed by the magistrate within 30 days of the aggrieved person or the Respondent receiving the order, whichever is later. ⁶⁴

33) Can the magistrate alter the order if the circumstances change after the order was passed?

- Yes. If the aggrieved person or Respondent applies to the magistrate stating that there is a change of circumstances, the magistrate on being satisfied with the same may alter/modify/revoke any order passed under the DV Act, 2005.
 This application can be made with the help of a Protection Officer or a lawyer.
- However, the Magistrate can pass such an order only after being satisfied that
 the application is not vitiated by force, fraud or coercion or any other factor.
 The court shall record the reasons in writing and include any
 undertaking/surety given by the Respondent. 66

34) I live in a house owned by my in-laws. My husband and in-laws are forcing me to leave the house. What can I do?

You have a right to reside in the shared household even if you don't have any title or interest in the property. You can apply before the Magistrate for a residence order requesting any of the reliefs as stated above.

35) My fear in opting for counselling is that he will convince the counsellor or the counsellor will take his side. What should I do? Can I refuse to take the session?

The Magistrate may ask you or the Respondent to undergo counselling either individually or jointly at any stage of the proceeding. You cannot refuse to

⁶⁵ Section 25(2), Domestic Violence Act, 2005

⁶⁴ Section 29, Domestic Violence Act, 2005

⁶⁶ Rule 14(17), Domestic Violence Rules, 2006



undergo counselling. However, the counsellor has a duty to be a neutral person. If you face any issues during counselling or if you feel he/she has any interest in the dispute, is biased or is related to your husband, you can inform the Magistrate.

36) The counsellor appointed by the Magistrate has previously worked with my husband. Is that fine?

No, a counsellor cannot be any person interested in any of the parties — either interested with the subject matter of the dispute or is related to any one of the parties or to the lawyers who represent them.⁶⁷ You may object to the appointment of the counsellor before the Magistrate, although you can also file an application/affidavit waiving your objection to such conflict in writing.

Please Note

A lawyer who has appeared for the Respondent in the case or any other suit or proceedings connected therewith, is also deemed ineligible.

37) What is the procedure if I opt for counselling?

- The counsellor shall convene a meeting at a place convenient to the aggrieved person or both parties.
- The Respondent shall furnish an undertaking that he or she wouldn't cause any such domestic violence as complained communicate with the aggrieved person in any way except during counselling or in court.
- The Respondent will be informed that they are not allowed to plead any counter-justification for the act of violence.
- The counsellor will take efforts to arrive at a settlement (only if the aggrieved person desires).

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⁶⁷ Rule 13, Domestic Violence Rules, 2006



- If the counsellor arrives at a settlement, the counsellor shall record the terms of the settlement, get it endorsed by the parties and forward it to the magistrate. The counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.
- Considering the efficacy of the settlement, the court will conduct a
 preliminary inquiry and may ask the Respondent to give an undertaking to
 refrain from repeating the acts of domestic violence that have been admitted
 to have been committed by the Respondent. The court may then accept the
 settlement with or without conditions.
- In cases where settlement cannot be arrived in the counselling proceedings, the Counsellor will report the failure of such proceedings to the court and the court shall proceed with the case in accordance with the DV Act, 2005.⁶⁸

38) Can the court make any inference from the facts admitted by the Respondent in the counselling proceedings?

No. An order cannot be passed by the Magistrate solely based on the record of the counselling proceedings.⁶⁹

39) I left the shared household with my major and minor child due to domestic violence. Can the husband file a kidnapping case against me?

You need to immediately file an application before the Magistrate and get a custody order as given above. Once you get the custody order, the husband will not be successful if they file any case against you. However please bear in mind that the DV Act, 2005 guarantees only interim (temporary) custody orders. (To know more about custody, please see here).



⁶⁸ Rule 14, Domestic Violence Rules, 2006

⁶⁹ Rule 16(16), Domestic Violence Rules, 2006



40) Can the court modify the terms of the settlement, once agreed by both parties?

Yes. The court will conduct a preliminary inquiry and may accept the terms of the settlement with conditions. If the aggrieved person requests, the court may also modify the terms of the settlement.⁷⁰

41)I want privacy and I don't want the public or any third person to be present during court hearings. Am I entitled to seek private hearings?

Yes. The law allows for an in-camera hearing (hearing in the chambers) if either party to the proceeding desires and the magistrate considers it necessary. ⁷¹ To know more about in-camera hearing proceedings, please see here).

42) Can the Magistrate grant permanent custody of the child?

No, the Magistrate can grant only temporary custody of the child for a limited period or till the completion of the proceedings before the Magistrate.

43) Can the Magistrate pass an order granting temporary custody of the child even when proceedings for divorce are pending before the family court?

Yes, the Magistrate can pass an order granting temporary custody of the child even when proceedings for divorce are pending before the family court⁷²

44) What are the defences available to the Respondent?

The Respondent may, among others, claim the following defences

• There is no act of domestic violence

⁷⁰ Rule 14(14), Domestic Violence Rules, 2006

⁷¹ Section 16, Domestic Violence Act, 2005

⁷² Oliver Menezes v. Serita Therese Mathias, Criminal Petition No.356/2019 (Karnataka High Court)



- The Respondent did not commit any domestic violence
- The allegations are vague and unsubstantiated
- The relationship between the aggrieved person and the Respondent is not a domestic relationship

G. WHAT IF THE RESPONDENT FAILS TO COMPLY WITH THE ORDERS PASSED BY THE MAGISTRATE?

Breach of Protection Order

Breach of Protection Order is an offence. The Respondent may be punished:

- i. Imprisonment up to 1 year (or)
- ii. Fine up to Rs. 20,000 (or)
- iii. Fine and Imprisonment, both.⁷³

However, you may keep in mind that the Respondent may be released on bail.⁷⁴ While the court grants bail, the court may pass an order⁷⁵:

- Restraining the Respondent from committing or threatening to commit
 Domestic Violence
- ii. Restraining the Respondent in communicating (in any way) with the aggrieved person or children
- iii. Prohibiting consumption of alcohol or drugs
- iv. Directing the Respondent to stay away from the place of residence of the aggrieved person
- v. Prohibiting the possession of any dangerous weapon

⁷³ Section 31, Domestic Violence Act, 2005

⁷⁴ Section 31, Domestic Violence Act, 2005

⁷⁵ Section 15(9), Domestic Violence Rules, 2006



Breach of Compensation Order

If the Respondent fails to comply with the compensation order, the court may order the Respondent's employer or boss to pay the amount to the court and deduct the said amount from the salary of the Respondent.⁷⁶

FAQs

45) What should I do if the Respondent fails to obey the protection order passed by the court?

You can do the following:

- Report the breach to the Protection Officer. The Protection Officer shall immediately rescue the aggrieved person by seeking help from the police station and assist the aggrieved person to lodge a complaint before police authorities.⁷⁷(or)
- File a complaint with the Police Station (or)
- Directly file a complaint before the magistrate

46) Can I report the breach of Protection Order after 3 years?

No. The breach has to be reported within one year from the date of breach and not later.⁷⁸

⁷⁶ Section 20(6), Domestic Violence Act, 2005

⁷⁷ Rule 15(5), Domestic Violence Rules, 2006

⁷⁸ Kamatchi v. Lakshmi Narayanan, AIR 2022 SC 2932



H. SCHEMES TO PROTECT VICTIMS OF DOMESTIC VIOLENCE?

The following schemes are available to victims of domestic violence:

One Stop Centre Scheme⁷⁹

- One Stop Centres (OSCs) are intended to support women affected by violence, in private and public spaces, within the family, community and at the workplace.
- Women facing physical, sexual, emotional, psychological and economic abuse, irrespective of age, class, caste, education status, marital status, race and culture will be facilitated with support and redressal.
- Aggrieved women facing any kind of violence due to attempted sexual harassment, sexual assault, domestic violence, trafficking, honour-related crimes, acid attacks or witch-hunting who have reached out or been referred to the OSC will be provided with specialized services.

Universalization of Women Helplines⁸⁰

- The Women Helpline Scheme provides 24-hour emergency and nonemergency response to women affected by violence, both in public and private spaces by linking them with appropriate authority such as Police, One Stop Centre, Hospital, Legal Services etc.
- The Women Helpline also supports women in distress with rescue vans and counselling services in addition to providing information about women's welfare schemes and programmes across the country.
- Women can dial 181 short code to avail services from the Women Helpline.

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⁷⁹ https: or or wcd.nic.in or sites or default or files or OSC G.pdf

⁸⁰ https: or or pib.gov.in or Pressreleaseshare.aspx?PRID=1795471



Swadhar Greh Scheme⁸¹

Under the Scheme, Swadhar Greh will be set up in every district with a capacity of 30 women with the following objectives:

- To cater to the primary need of shelter, food, clothing, medical treatment and care of women in distress and those who are without any social and economic support.
- To enable them to regain their emotional strength that they might have lost owing to violence against them or other unfortunate circumstances.
- To provide them with legal aid and guidance to enable their rehabilitation and readjustment in family or society.
- To rehabilitate them economically and emotionally.
- To act as a support system that understands and meets various requirements of women in distress.
- To enable them to start their life afresh with dignity and confidence.

I. APPLICABILITY TO QUEER INDIVIDUALS

Disclaimer

The applicability of the DV Act, 2005 and DV Rules, 2006 to queer persons has not been looked into by the courts yet. However, the law relating to the rights of queer persons in general is evolving and the answers to FAQs (below) only give suggestions based on the evolving jurisprudence.

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⁸¹ https: or or www.india.gov.in or spotlight or swadhar-greh-scheme



Transgenders

The Hon'ble Supreme Court has recognised the right of self-identification of transgender persons (i.e.) A transgender person can identify themselves as a male/female/transgender. 82

a) Persons who identify themselves as 'female'

Persons who identify themselves as 'female' should be able to avail protection under the DV Act, 2005 and DV Rules, 2006. All rights and remedies mentioned in the above sub-sections of this section should apply to them as well.

Please Note

This is a far-reaching interpretation of the law and has not been decided/settled by the courts yet.

b) Persons who identify themselves as 'male' or 'transgender'

The DV Act, 2005 and the DV Rules, 2006 only protect 'women' from acts of domestic violence. So, persons who identify themselves as 'male' or 'transgender' will likely not be able to get protection under these laws.

Same-sex Relationships

The DV Act, 2005 and the DV Rules, 2006 do not intend to protect persons in same-sex relationships. Though persons living in a live-in relationship are entitled to avail protection under the Domestic Violence Law, they should be qualified to enter into a legal marriage. Since same-sex marriages have not yet been recognised in India, same-sex couples cannot claim protection under these laws.

FAQs

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⁸² National legal Services Authority v. Union of India, (2014) 5 SCC 438



47) How far is the law on domestic violence applicable to transgender persons?

- A transgender person who identifies themself as female/woman should be entitled to protection under the DV Act, 2005 and DV Rules, 2006.
 However, this is not the current practice and has not been decided by the courts.
- A transgender person who identifies themself as male/transgender will likely not be entitled to protection under these laws.

48) How can a transgender person who identifies themself as a female file a complaint under the law and what are the rights and remedies available?

All procedures, rights and remedies are the same as that for 'women' as provided under the previous sub-sections of this section. It may be noted that this is not the current practice and has not been decided by the courts yet.





LAWS ON MATRIMONIAL RELIEFS

A. OVERVIEW OF THE APPLICABLE LAWS

Legal issues governing interpersonal relationships such as marriage, adoption, guardianship, inheritance, maintenance, partition etc., are governed by personal laws. Indian personal laws are fairly complex and it is governed based on religion, faith, culture and customs with each religion adhering to its own specific laws. Of the personal laws, those governing the aspect of marriage, judicial separation, divorce, maintenance and child custody are generally known as matrimonial laws. The matrimonial laws in force in India are as follows:

- i. The Hindu Marriage Act, 1955 (HM Act, 1955)
- ii. The Divorce Act, 1869
- iii. The Indian Christian Marriage Act, 1872 (ICM Act, 1972)
- iv. The Parsi Marriage and Divorce Act, 1936 (PMD Act, 1936)
- v. The Muslim Personal Law (Shariat) Application Act, 1937 (MPLA Act, 1937)
- vi. The Dissolution of Muslim Marriage Act, 1939 (DMM Act, 1939)
- vii. The Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRD Act 1986)
- viii. The Special Marriage Act, 1954 (SM Act, 1954) & The Foreign Marriage Act, 1969 (FM Act, 1969)





Proceedings instituted under any of the above-mentioned laws will be regulated by the Family Courts Act, 1984 and the Civil Procedure Code, 1908 (CPC, 1908). Alternatively, in some cases, relief under, Code of Criminal Procedure, 1973 (CrPC, 1973) could be sought. This chapter will thus focus on the various legal reliefs available to women under the different matrimonial laws enforced in India.

Disclaimer

The information provided in this section is limited to the above-listed statutes. Matrimonial laws are a set of dynamic laws that undergo constant change and thus the information in this section is based on the understanding of these laws at the time of publication. Further, with respect to court procedures and processes it is best to seek legal assistance from lawyers practising in the respective district family courts as the procedure varies from district to district and also from state to state.

Please Note

- i. Petitioner/ the Party refers to the person filing an application/ petition/ suit
- ii. Respondent/ Other Party/ Opposite Party refers to the person responding to such application/ petition/ suit.

The Hindu Marriage Act, 1955

The HM Act, 1955 applies

- to anyone who is Hindu by religion including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj⁸³.
- to any person who is a Buddhist, Sikh or Jain by religion⁸⁴
- to both legitimate and illegitimate children whose parent or any of whose parents is a Hindu

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⁸³ Section 2(1)(a), The Hindu Marriage Act, 1955

⁸⁴ Section 2(1)(b), The Hindu Marriage Act, 1955



• to persons who have converted or reconverted to Hinduism, Buddhism, Sikhism or Jainism⁸⁵.

The application of this law extends to Hindus who have their domicile (permanent residence) in India but are outside their domiciled territories.⁸⁶

The Special Marriage Act, 1954 and The Foreign Marriage Act, 1969

The SM Act, 1954 is a law enacted to ensure the secular fabric of the nation was preserved whereby inter-religious couples, citizen and non-citizen couples can have their marriage registered in India. The FM Act, 1969 allows for the solemnisation of marriages of Indian citizens outside India. Matrimonial reliefs such as divorce, judicial separation, custody and maintenance for marriages registered under the FM Act 1969 should be claimed under the provisions of the SM Act, 1954.

Please Note

The SM Act, 1954 and the HM Act, 1955 have similar provisions with some exceptions. Therefore, only some provisions in the SM Act, 1954 pertaining to reliefs which differ from the provisions of the Hindu Marriage Act, 1954 will be addressed separately in the subsequent sections. Other reliefs discussed under the HM Act, 1955 will apply to SM Act, 1954 and the relevant statutory provisions of the SM Act, 1954 will be marked in the footnotes for further reference.

The Indian Christian Marriage Act, 1872 and The Divorce Act, 1869

The ICM Act, 1872 regulates the solemnisation of marriages of Indians where one or both participants are professing the Christian faith while the Divorce Act 1869 deals with divorce and other matrimonial causes for persons of the Christian faith. For the

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⁸⁵ Explanation to Section 2 (1), The Hindu Marriage Act, 1955

⁸⁶ Section 1(2), The Hindu Marriage Act, 1955



purpose of this chapter, the focus is on the reliefs available under the Divorce Act, 1869.

The Parsi Marriage and Divorce Act, 1936

The PMD Act, 1936 governs the law relating to marriage and divorce among Parsis in India.

The Muslim Personal Law (Shariat) Application Act, 1937; The Dissolution of Muslim Marriage Act, 1939; and The Muslim Women (Protection Of Rights On Divorce) Act, 1986

Muslim law is largely customary and efforts have been taken to codify the same. The MPLA Act, 1937 establishes that marriage, divorce, maintenance, guardianship, gifts, trusts etc., will be dealt in accordance with *Shariat* for Muslims in India. The DMM Act, 1939 was enacted as an effort to codify Muslim women's right to dissolve a marriage judicially. Thereafter, the MWPRD Act, 1986 was enacted to protect the rights of women who have been divorced by or obtained a divorce from their husbands.

Please Note

For the purpose of this section, all the above-mentioned Muslim laws shall be jointly referred to as 'Muslim law', however, the relevant statutory section will be marked in the footnote accordingly for reference & clarity.





B. RESTITUTION OF CONJUGAL RIGHTS

Restitution of conjugal rights is a matrimonial remedy that can be sought by either party to a marriage i.e., the husband or the wife when the other party unreasonably withdraws from the society of the other without any due reason. When a decree for restitution of conjugal rights is passed by a court, the party against whom it is granted will have to cohabit with the party in whose favour the order has been passed.⁸⁷

The Hindu Marriage Act, 1955⁸⁸ and The Special Marriage Act, 1954⁸⁹

• Who can apply for restitution of conjugal rights?

Both husband and the wife can apply for restitution of conjugal rights.

• When can one apply for restitution of conjugal rights?

When one party to a marriage withdraws himself/herself from the society of the other party to a marriage without any reasonable excuse, the other party can apply for restitution of conjugal rights. 'Society' here would mean refusal to cohabit together and discharge the required matrimonial obligations. A party can apply for restitution of conjugal rights at any time before a divorce decree has been pronounced.

• When would a court grant a decree of restitution of conjugal rights?

A Court would grant a decree in favour of restitution of conjugal rights if it were satisfied as to the truth of the pleadings of both parties and there is no legal ground barring the Court from granting the same.

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⁸⁷ Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148

⁸⁸ Section 9, The Hindu Marriage Act, 1955

⁸⁹ See also, Section 22, The Special Marriage Act, 1954



When can a court refuse to grant a decree of restitution of conjugal rights?

The Court can refuse to grant a decree of restitution of conjugal rights when either reasonable excuse or a legal ground under the law (i.e., ground for divorce or judicial separation) is raised as a defence and the same has also been established before it. ⁹⁰

What happens when a decree of restitution of conjugal rights is not complied with?

If a decree for restitution of conjugal rights is not complied with, the decree holder may try and attach the property of the party against whom the decree is made or by placing him/her in civil detention⁹¹ (Please see <u>Appendix VI</u>). Alternatively, the Court may order the husband to make periodic payments to the wife (if she holds the decree in her favour) when the husband fails to obey the decree under this section.⁹² However, beyond this the Court cannot force a party to cohabit with their spouse under this section, and may be constrained to grant divorce if there has been no restitution for a period of a year or more after the grant of the decree.

What effect does a decree of restitution of conjugal rights have on divorce?

If there has been no restitution of cohabitation between the two parties for a period of 1 year or more after a decree herein has been passed, then a petition for divorce can be filed on this ground.⁹³

⁹⁰ Panchadi Chitti Venkanna v Panchadi Mahaiakshmi & Ors., Tr. 578/73/ & AAO 576/72, Andhra Pradesh HC

⁹¹ Order XXI, Rule 32, The Code of Civil Procedure, 1908

⁹² Order XXI, Rule 33, The Code of Civil Procedure, 1908

⁹³ Section 13 (1A) (ii), The Hindu Marriage Act, 1955



The Divorce Act, 1869

• Who can file for restitution of conjugal rights?

Both husband and wife can file for restitution of conjugal rights.

• What defence can be taken to a petition of conjugal rights?

Any ground for a suit for judicial separation or nullity of marriage can be taken as a defence for restitution of conjugal rights.⁹⁴

Grounds for Judicial Separation:

Adultery, cruelty and desertion for two years or more.95

Grounds for Nullity of Marriage

Impotence, prohibited degrees of consanguinity, lunacy and bigamy. 96

• Is non-compliance of a decree of restitution of conjugal rights a ground for divorce?

Yes, if a decree for restitution of conjugal rights has not been complied with for a period of two years, then a petition for divorce can be presented on the said ground.⁹⁷

• How to enforce a decree of restitution of conjugal rights?

All proceedings under this Act shall be regulated by the CPC, 1908.⁹⁸ For more information, please see here.

The Parsi Marriage and Divorce Act, 1936

⁹⁴ Section 33, The Divorce Act, 1869

⁹⁵ Section 22, The Divorce Act, 1869

⁹⁶ Section 19, Divorce Act, 1869

⁹⁷ Section 10 (1) (viii), Divorce Act, 1869

⁹⁸ Section 45, Divorce Act, 1869



• Who can file a suit for restitution of conjugal rights?

Both husband and wife can file a suit for restitution of conjugal rights.

• When can one file for restitution of conjugal rights?

A suit for restitution of conjugal rights can only be filed if a party to the marriage has deserted or ceased to cohabit without any lawful cause with the other party. 99

What is the effect of a decree for restitution of conjugal rights on divorce?

Either party to a marriage can sue for divorce, if there is no restitution of conjugal rights for a period of one year after obtaining a decree under this section.¹⁰⁰

Muslim Law

• Is the relief of restitution of conjugal rights available in Muslim law?

Muslim law treats marriage as a civil contract. A petition or suit for restitution of conjugal rights is nothing but an enforcement of a right arising from that contract. This can to a point also be treated as a suit for specific performance of the contract. Due to a lack of codified law in this aspect, courts have decided restitution of conjugal rights for Muslims under equitable principles.¹⁰¹ This right can be enforced by both husband and wife.

FAQs

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⁹⁹ Section 36, The Parsi Marriage and Divorce Act, 1936

¹⁰⁰ Section 32 A (ii), The Parsi Marriage and Divorce Act, 1936

¹⁰¹ Mohammad Amjed v. Sara @ Sonia Dhir, M.L. No. 11/2010 (V Civil Judge, Saket, South Delhi)



49) I am a victim of domestic violence and I have been living with my parents for the past year. My husband has filed for restitution of conjugal rights. Will I now have to live with my husband or face some penalty?

No. You can contest the restitution case filed by your husband and in your defence, establish your case of domestic violence in the said proceeding for restitution of conjugal rights. Courts will only grant a decree of restitution of conjugal rights when there is no reasonable cause for withdrawal.

C. JUDICIAL SEPARATION

A decree of Judicial Separation allows the parties to a marriage to formally live apart thus eliminating the need to cohabit with each other. The marriage however is not considered to be dissolved and is very much alive. 102

The Hindu Marriage Act, 1955

Who can apply for Judicial Separation¹⁰³?

Both husband and the wife can apply for judicial separation.

- What is the effect of a court decree on Judicial Separation?
- i. The marriage is considered to subsist, and all the obligations of a valid marriage will still exist however the parties to a marriage are not required to cohabit.
- ii. If any party dies, pending judicial separation, the other party can still inherit the assets of the deceased party¹⁰⁴.
- iii. The parties to a marriage cannot remarry during judicial separation.

¹⁰² Jeet Singh v. State of U.P., (1993) 1 SCC 325

¹⁰³ Section 10, The Hindu Marriage Act, 1955; Section 23, The Special Marriage Act, 1954

¹⁰⁴ Dr. Basant K. Sharma, Hindu Law, 3rd Edition, Central Law Publications,



iv. Any sexual intercourse by the husband without the consent of the wife during the pendency of judicial separation will be considered rape and can be punished with imprisonment up to two years and a fine. ¹⁰⁵

• When can one file for judicial separation?

Judicial Separation can be filed if a party to a marriage does not want the marriage to be dissolved but wants to live separately. Under the HM Act, 1955, grounds for judicial separation are the same as that of grounds for divorce. The grounds for judicial separation are as follows:

For both husband and wife

Adultery, cruelty, desertion for a period of two years or more, conversion to another religion, unsoundness of mind, communicable venereal disease, renouncing the world by entering a religious order, has not been heard as being alive for a period of 7 years or more. ¹⁰⁶

For wife

Bigamy, the husband guilty of rape, sodomy or bestiality, the wife has been living apart for a period of one year or upwards after obtaining an order of maintenance, the marriage had been solemnised when the wife was less than fifteen years of age and the same was repudiated by her after attaining majority. ¹⁰⁷

• Is a decree on judicial separation final?

No, the court can always rescind a decree of judicial separation when a party to the decree files an application to that effect at a later stage, But the Court will only do so

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¹⁰⁵ Section 376 A, The Indian Penal Code, 1860

¹⁰⁶ Section 13 (1), The Hindu Marriage Act, 1955

¹⁰⁷ Section 13 (2), The Hindu Marriage Act, 1955



on being satisfied with the truth of the statements made in such an application and if such a relief is reasonable on the presented facts. 108

• What is the effect of judicial separation on divorce?

If there has been no cohabitation between the parties for a period of one year since the passing of a judicial separation decree, then that can be used as a ground for filing divorce.¹⁰⁹

The Special Marriage Act, 1954

• On what grounds can a person apply for judicial separation?

Under the SM Act, 1954, grounds for judicial separation are the same as that of the grounds for divorce. ¹¹⁰ Unlike the HM Act, Judicial Separation under the SM Act, 1954 can also be filed when a decree for restitution of conjugal rights has not been complied by a party to the marriage. ¹¹¹

For both husband and wife

Adultery, desertion for a period not less than two years, undergoing a sentence for imprisonment for seven years or more, cruelty, incurable unsound mind, venereal disease, has not been heard as being alive for a period of 7 years or more.

For wife

Husband guilty of rape, sodomy or bestiality, the wife has been living apart for a period of one year or upwards after obtaining an order of maintenance. 112

¹⁰⁸ Section 10 (2), The Hindu Marriage Act, 1955

¹⁰⁹ Section 13(1A)(i), The Hindu Marriage Act, 1955; Section 27 (2), The Special Marriage Act, 1954

¹¹⁰ Section 23 (1) (a), The Special Marriage Act, 1954

¹¹¹ Section 23(1) (b), The Special Marriage Act, 1954

¹¹² Section 27, The Special Marriage Act, 1954



Judicial Separation under the SM Act, 1954 can also be filed when a decree for restitution of conjugal rights has not been complied with by a party to the marriage. 113

The Divorce Act, 1869

• Who can apply for judicial separation?

Both husband and wife can apply for judicial separation. 114

• What is the effect of judicial separation on the parties concerned?

Once a decree of judicial separation is pronounced, both husband and wife will be considered unmarried with respect to the properties acquired by them and contractual obligations entered by them post the separation. That is the wife, or the husband can dispose of the property they acquire during separation as unmarried and if they die intestate, the other party will have no claim over it¹¹⁵. Similarly, the parties won't have to bear any liability for the contractual obligations entered into by the other during the separation. ¹¹⁶

• Can a decree of Judicial Separation be reversed?

Yes, any party to the decree can apply for reversal if the decree was obtained in their absence and if they can establish a reasonable excuse for the same. ¹¹⁷

The Parsi Marriage and Divorce Act, 1936

• Who can file for judicial separation?

¹¹³ Section 23(1) (b), The Special Marriage Act, 1954

¹¹⁴ Section 22, The Divorce Act, 1869

¹¹⁵ Section 24, The Divorce Act, 1869

¹¹⁶ Section 25, The Divorce Act, 1869

¹¹⁷ Section 26, The Divorce Act, 1869.



Both parties to the marriage can file for judicial separation. 118

• On what grounds can one file for judicial separation?

The grounds for judicial separation are the same as that of divorce.

For both husband and wife

Non-consummation of marriage (for 1 year), unsound mind at the time of marriage (to be filed within 3 years of marriage), suffering from incurable unsoundness of mind for a period of 2 years, defendant pregnant by some other person at the time of marriage, (adultery, fornication, bigamy, rape or unnatural offence – suit must be filed within 2 years of knowledge & no marital intercourse should have happened after it comes to the knowledge of the other party), cruelty, voluntarily causing grievous hurt, has infected the other party with venereal disease, wife compelled to prostitution by husband, if one party has been sentenced to imprisonment for seven years or more, desertion for at least two years and above, cohabitation has not been resumed since an order for maintenance or if either of the parties has ceased to be a Parsi. ¹¹⁹

• What is the effect of judicial separation or divorce?

If there has been no resumption of cohabitation for a period of one year since the passing of a decree herein, then a petition for divorce can be filed on the same ground. 120

Muslim Law

¹¹⁸ Section 34, The Parsi Marriage and Divorce Act, 1936

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¹¹⁹ Section 34 & Section 32, The Parsi Marriage and Divorce Act, 1936

¹²⁰ Section 32A (1) (i), The Parsi Marriage and Divorce Act, 1936



• Is Judicial separation recognised in Muslim Law?

Codified Muslim Law does not recognise judicial separation.

FAQs

50) I am under constant abuse at my in-laws' house. I do not want to divorce my husband. Can I live separately from him?

Yes. To legally protect your rights in such a separation, you can approach the courts for judicial separation. To know more about judicial separation, please see here.

51)If I apply for judicial separation and not divorce, can I still apply for the custody of my child and maintenance for myself and my child?

Yes, both maintenance and child custody are ancillary reliefs to both judicial separation and divorce.

D. DIVORCE

Divorce is a legal process by which a marriage is terminated. The parties become free of any marital obligations, and can also choose to remarry once a decree for divorce is granted.

Grounds for divorce for victims of domestic violence

A victim of domestic violence can file for divorce on the ground of cruelty. The definition of 'cruelty' under the law has changed from time to time based on the socioeconomic factors of the parties involved¹²¹. But cruelty *per se* refers to wilful and

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¹²¹ Gananath Pattanaik v. State of Orissa, (2002) 2 SCC 619



unjustifiable conduct causing danger to life, limb or health, bodily or mentally or as to give rise to a reasonable apprehension of such a danger. Cruelty can be both physical, emotional, financial, psychological, and mental in nature. Mental cruelty can be construed as verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace.¹²²

Examples

- i. A alleges that B comes from a family of lunatics and that B is suffering from mental disorders that require medical attention. A further alleges in a degrading manner in the presence of family and friends that B is incapable of carrying out simple day-to-day tasks because of the said mental disorders. A is said to have inflicted cruelty against B.
- ii. A repeatedly alleges that B is having extra-marital affairs without any base and physically injures B every now and then, A is said to have inflicted cruelty against B.
- iii. A refuse to buy certain non-essential items for B because of budget constraints.A has not inflicted any cruelty against B.

The Hindu Marriage Act, 1955

• What are the modes in which a petition for divorce could be filed?

A petition for divorce could be filed in two methods 123

- i. Contested divorce where one party wants a divorce, and the other party doesn't
 - ii. Divorce by mutual consent where both parties mutually agree to file for divorce

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¹²² A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22

¹²³ Section 13 & 13B, The Hindu Marriage Act, 1955; Section 27 & 28, The Special Marriage Act, 1954



• When can one file for divorce in case it is contested?

The grounds to file for divorce and judicial separation are the same and they are enumerated in Section 13 of the HM Act,1955 (Please see here)

• Is there any time bar in presenting a petition for contested divorce?

A petition for divorce under the HM Act, 1955 cannot be presented before the expiry of one year of marriage unless the Petitioner faces exceptional hardship or on the ground of exceptional depravity of the Respondent¹²⁴

• When can one file for divorce by mutual consent?

A petition for divorce by mutual consent must be presented by both parties to a marriage stating that both parties have been living separately for a period of one year or more and they have mutually agreed to get divorced. After filing, the courts will give you a minimum 6 months up to 18 months to reconcile with your spouse and withdraw your petition if you wish to do so. The minimum 'cooling off' period of 6 months is not a strict rule. You can apply for a waiver of the period.

• In a divorce proceeding, could there be any other outcome other than the grant or denial of divorce?

When a petition for divorce is filed, the responding party may file for the alternate relief of judicial separation or even restitution of conjugal rights. In such a case, depending upon the ground in which the divorce petition is filed and on considering the circumstances and the petition filed by the Respondent, the court may instead pass a decree of judicial separation or restitution, if it deems fit.

¹²⁴ Section 14, The Hindu Marriage Act, 1955



The court cannot pass such alternate orders if the ground for divorce is conversion to another religion, renouncement of the world by entering a religious order and not been heard as being alive for a period of 7 years or more.¹²⁵

The Special Marriage Act, 1954

• What are the grounds for divorce?

The grounds for divorce are the same as that of judicial separation (Please see here). 126

The Divorce Act, 1869

• Who can file a petition for divorce?

Both husband and the wife can file a petition for divorce.

• What are the grounds for divorce?

The grounds for divorce are as follows:

For both husband and wife:

Adultery, ceased to be a Christian, unsound mind (not less than two years), suffering from venereal disease (not less than two years), has not been heard of as alive for a period of seven years or more, failure to comply with a decree for restitution of conjugal rights for a period of two years, desertion (2 years), Cruelty. ¹²⁷

For wife:

Husband guilty of rape, sodomy, or bestiality¹²⁸

• When can a petition for divorce by mutual consent be filed?

¹²⁵ Section 13 A, The Hindu Marriage Act, 1955

¹²⁶ Section 27, The Special Marriage Act, 1955

¹²⁷ Section 10 (1), The Divorce Act, 1869

¹²⁸ Section 10 (2), The Divorce Act, 1869



A petition for divorce by mutual consent can be filed when the parties have not been able to live together for a period of two years and have mutually agreed to dissolve the marriage. 129

On the motion of both parties not less than six months after the date of presentation of the petition and not later than 18 months after the said date, if the petition is not withdrawn, the court shall pass a decree dissolving the marriage.

• When can a petition for divorce be dismissed?

The court is not be bound to pass a decree for divorce if it finds that the Petitioner himself/ herself has been guilty of adultery or if the petition has been presented after unreasonable delay, or if the Petitioner was cruel, has wilfully deserted or neglected the other party to the marriage. 130

The court will also dismiss a petition for divorce, if the Petitioner's case is not proved or if it finds that the Petitioner is an accessory to / conniving through the said form of marriage or if the Petitioner is found to be in collusion with the Respondents in presenting the petition for divorce.¹³¹

The Court shall also dismiss the petition if it is presented or prosecuted in collusion with either of the Respondents.

• Can the opposite party make a counterclaim in a petition for divorce?

Yes, the opposite party can make a counterclaim in a petition for divorce on any of the contestable grounds, and if the same is established, the court may order relief in favour of the opposite party.

¹²⁹ Section 10A, The Divorce Act, 1869

¹³⁰ Section 14, The Divorce Act, 1869

¹³¹ Section 13, The Divorce Act, 1869



 What happens if a petition for divorce on the ground of adultery is presented after the adultery has been condoned?

Condoned herein would mean resumption of conjugal cohabitation¹³² and in such a case a petition for divorce on that ground will be dismissed by the court.¹³³

• From when will a decree of divorce come into effect?

A decree for the dissolution of marriage will be considered as a 'decree nisi' i.e., it will only become absolute on the date specified in the order which usually shall not be less than six months from the date of pronouncement.¹³⁴

The Parsi Marriage and Divorce Act, 1936

• Who can file for divorce?

Both husband and wife can file for divorce.

• What are the grounds for divorce?

The grounds for divorce and judicial separation are the same. (Please see here)

• What entails grievous hurt?

Emasculation, permanent privation of either eye or ear or any member or any joint, destruction or permanent impairing of the powers of any member or joint, permanent disfiguration of the head or face, and any hurt endangering life.¹³⁵

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¹³² Section 14, The Divorce Act, 1869

¹³³ Section 13, The Divorce Act, 1869

¹³⁴ Section 16, The Divorce Act, 1869

¹³⁵ Section 2 (4), The Parsi Marriage and Divorce Act, 1936



• If a party to a marriage has not been heard of as alive for seven years or more, is that a ground for divorce?

Such a case is not treated as a ground for contested divorce under this law. The party concerned however can file a suit for dissolution of such marriage. 136

• If a suit for divorce on the ground of cruelty is presented, can the court grant any relief other than divorce?

With respect to divorce on the ground of cruelty, the court has the discretion to either grant relief of divorce or judicial separation.¹³⁷

• When can one file a petition for divorce by mutual?

A petition for divorce by mutual consent can be presented after a year of non-cohabitation wherein the parties have mutually agreed to dissolve the marriage. 138

Muslim Law

• What are the kinds of divorce recognised in Muslim law?

Muslim law recognises two kinds of divorce, that is, i) extra-judicial divorce & ii) judicial divorce.

 What are the modes by which divorce can be initiated by the husband extra-judicially?

Extra-judicial divorces pronounced by the husband are of the following types: 139

i. Talaq-ul-Sunnat

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¹³⁶ Section 31, The Parsi Marriage and Divorce Act, 1936

¹³⁷ Section 32 (dd), The Parsi Marriage and Divorce Act, 1936

¹³⁸ Section 32 B, The Parsi Marriage and Divorce Act, 1936

¹³⁹ Syed Khaled Rashid, Muslim Law, Sixth Edition, EBC Explorer.



This is of two types, that is *Ahsan* and *Hasan*. In the first, the husband makes a single pronouncement of talaq during the period of *tuhr* (non-menstruation period) and allows the wife to follow her *iddat* period. During the *iddat* period the husband cannot indulge in any form of sexual intercourse. If he does, then the talaq becomes impliedly revocable. In the latter, *talaq* is pronounced thrice in consecutive periods of *tuhr*.. The word talaq is to be pronounced thrice. During the period of the three pronouncements, no sexual intercourse should take place. In the latter, *talalq* is pronounced thrice in consecutive periods of *tuhr*.

ii. Talaq-ul-Biddat

In this mode, the husband must pronounce talaq thrice in one go. This type of divorce was held unconstitutional by the Supreme court of India in the case of *Shayara Bano & Ors. v Union of India*¹⁴⁰.

iii. *Ila*

When the husband swears that he will not have sexual intercourse with his wife and abstains from it for four months, the divorce is effectuated.

iv. Zihar

When the husband compares his wife with his mother or any other female relatives within the prohibited degree.

Please Note

The Supreme court of India in the case of *Shamim Ara v. State of U.P.*¹⁴¹ held that the husband ought to adduce evidence and prove the pronouncement of talaq for it to be valid.



¹⁴⁰Shayara Bano & Ors. v Union of India, (2017) 9 SCC 1

¹⁴¹ Shamim Ara v State of U.P., (2002) 7 SCC 518



• In what mode can divorce be initiated by the wife extra-judicially

A Muslim wife can initiate divorce by way of Talaq - e - tawfid which means the power of talaq has been delegated to the wife. However, for the same, the husband must have authorised the wife at the time of the marriage contract to divorce herself from him.¹⁴²

• In what mode can divorce be initiated extra-judicially by mutual consent?

Extra-judicial divorce by mutual consent can be obtained in the following ways:143

i. Mubarat

Divorce is effectuated by the mutual consent of both husband and the wife. The husband needs to say 'talaq' once and it is irrevocable.

ii. Khula

A khula divorce is effected by an offer from the wife to compensate the husband if he releases her from her marital rights, and acceptance by the husband of the offer. It means that the wife can seek divorce by renouncing her claim to dower. It is for the husband to consider the same and grant divorce. However, in a recent improvement, The Kerala High court in November 2022 ruled that a Muslim woman can invoke khula without the consent of the husband. ¹⁴⁴

• Can a judicial decree be obtained under Muslim customary law?

Lian and *Faskh* are two customary modes to obtain a judicial decree of divorce. In the former, divorce is granted to the wife when the husband falsely slanders the wife of

¹⁴² Syed Khaled Rashid, 'Muslim Law', Sixth Edition, EBC Explorer

¹⁴³ Syed Khaled Rashid, 'Muslim Law', Sixth Edition, EBC Explorer

¹⁴⁴ R.P. No. 936 of 2021 in Mat Appeal No. 89 of 2020 (Kerala High Court)



adultery while in the latter, a petition for annulment of the marriage on grounds such as irregular marriage, marriage is within prohibited degrees etc. However, Faskh is not legally recognised under the MPLA Act, 1937. 146

• On what grounds can a wife file for a judicial decree of divorce?

Muslim women can file for a judicial decree of divorce under the DMM Act, 1939. The grounds for such contested divorce are as follows:

Whereabouts of husband not known for four years, husband neglected/failed to provide maintenance for two years, husband sentenced to imprisonment for seven years or more, the husband failed to perform marital obligations for a period of three years (without reasonable cause), impotency of the husband, suffering from an unsound mind or any venereal disease, to repudiate a marriage entered into before the age of fifteen after attaining majority and Cruelty.¹⁴⁷

• What would entail cruelty under this law?

Habitual assault, making life miserable by cruelty even if such conduct does not amount to physical ill-treatment, associating the wife with women of ill-repute, attempting to force the wife to lead an immoral life, preventing the wife to exercise her legal rights over her property or disposes off her property, obstructing the wife's religious practice, in case of a polygamous marriage not treating the wife equitably fall under the ground of 'cruelty.' 148

• Can a Muslim woman still file for a judicial decree of divorce after renouncing Islam or converting to another religion?

¹⁴⁵ Syed Khaled Rashid, 'Muslim Law', Sixth Edition, EBC Explorer

¹⁴⁶ Section 2, Muslim Personal Law (Shariat) Application Act, 1937

¹⁴⁷ Section 2, The Dissolution of Muslim Marriage Act, 1939

¹⁴⁸ Section 2 (viii), The Dissolution of Muslim Marriage Act, 1939



Yes, provided the woman was a Muslim by birth before conversion or renunciation. 149

What effect will a judicial decree on the dissolution of marriage have on a
 Muslim woman's right to dower?

A Muslim woman's right to dower will not be affected in any way owing to her dissolution of marriage. 150

• I am a Muslim woman, can I apply for divorce only under the Dissolution of Muslim Marriage Act, 1939 or can I also apply for extra-judicial divorce?

A Muslim woman has the option to apply for judicial divorce under the Dissolution of Muslim Marriage Act, 1939 as well as apply for divorce extra-judicially¹⁵¹ under *talaq*, *ila*, *ziha*, *khula* and *Mubara*..¹⁵² However, the Madras High Court, in a recent judgment held that women can initiate divorce extra-judicially but only through family courts and not before self-declared bodies.¹⁵³

FAQs

52) I want to leave my matrimonial house because of domestic violence and apply for divorce. Should I be prepared in any way before the filing of divorce?

Before the filing of divorce, it is always practical to collect your (& your child/children's) education, financial, medical, property & matrimonial records. In case of domestic violence, records as to violence inflicted in any form physical or mental should also be gathered as it strengthens your case for divorce.

53) Can I claim maintenance and custody only if I file for divorce?

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¹⁴⁹ Section 4, The Dissolution of Muslim Marriage Act, 1939

¹⁵⁰ Section 5, The Dissolution of Muslim Marriage Act, 1939

¹⁵¹ Raseena Pareekunju v. Muhammed Asif, O.P. (FC) No. 133 of 2021(Kerala High Court)

¹⁵² Section 2, The Muslim Personal Law (Shariat) Application Act, 1937

¹⁵³ Mohammed Rafi v. The State of Tamil Nadu & Ors., W.P. No. 35688 of 2019 (Madras High Court)



- Victims of domestic violence can claim maintenance and custody under the DV Act, 2005 before instituting any matrimonial proceedings. (Please see here)
- In case relief claimed is only with respect to maintenance, the wife and children can claim the same under the Cr.P.C., 1973. This can be filed independent of any matrimonial proceeding.¹⁵⁴

54) My marriage was never registered. Can I still apply for divorce?

Yes, but the court will require you to satisfy that the marriage occurred. Proof of marriage can be shown with the help of wedding photos, invitation or any other documentation attesting that the ceremonies of marriage have taken place.

55) I want to divorce my husband, but he is refusing. Can the police or any NGO exert pressure on him to concede to the divorce?

No, it is illegal to exert pressure on your partner to agree to a divorce. If your husband is not willing to consent to apply for a divorce by mutual consent, he can do so. You have the option of filing a contested divorce irrespective of whether he agrees or refuses and he is well within his rights to contest it. The court will make a decree after due consideration of the pleadings and evidence put forth by both parties.

56) I have filed for divorce; Can I continue to live in the matrimonial home with my husband?

There is no legal bar that the wife cannot reside with the husband during the pendency of the divorce proceeding. However, after a decree of divorce is pronounced, the divorced woman cannot as a matter of right claim the right to

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¹⁵⁴ Section 125 – 128, The Code of Criminal Procedure, 1973.



reside in a shared household as such right is only available for women in a subsisting marriage. Alternatively, she can make an application under the DV Act, 2005 to protect her residence after divorce if she is residing in a shared household.¹⁵⁵

Please Note

Right to reside in a shared household and residence order are all statutory reliefs available only under the DV Act, 2005 and not under any matrimonial laws.

57) Can I be forced to divorce my husband if I do not want it?

Nobody can force you to agree to a divorce. You can contest the divorce proceedings initiated by your husband and also have the right to make counterclaims. The court will decide either grant or deny divorce after careful consideration of the case made by both sides.

58) My marriage was not registered at the time of solemnisation. Can I get it registered at a later time?

Yes. Marriages not registered at the time of solemnisation can be registered later. 156

59) At the time of leaving my matrimonial home, I was not able to collect my documents and identifications like my education diplomas, medical records etc.

How can I get it now?



¹⁵⁵ Ramachandra Warrior v. Jayashree, ILR 2021 (2) Kerala 604

¹⁵⁶ Section 16, The Special Marriage Act, 1954



You can file a miscellaneous application in your matrimonial proceeding seeking the return of all your documentation and other personal articles. Please consult with a local lawyer as procedure can vary across district courts.

60) Can the proceedings for divorce/ maintenance/ custody/ domestic violence proceedings/ any other criminal proceedings happen simultaneously?

Yes, any/all of the mentioned proceedings can happen simultaneously in the appropriate jurisdictional forums as they involve distinct reliefs.

E. MAINTENANCE

• What is maintenance?

Maintenance is court-ordered financial support as part of a matrimonial proceeding given by one party to the marriage to the other party with no independent income. Such maintenance will be decreed on consideration of factors such as the financial status of the parties, reasonable wants, income and property, number of dependants, liabilities and payment capacity of the party to pay maintenance. ¹⁵⁷

• What are the different types of maintenance?

Maintenance can usually be classified into types; maintenance *pendente lite* and permanent maintenance or alimony. The former is usually granted during the pendency of any matrimonial proceeding as monthly support and to cover the costs of the litigation. The latter is maintenance granted after divorce either in the form of a lumpsum amount or in periodic payments.¹⁵⁸

¹⁵⁷ Dr. Basant K. Sharma, Hindu Law, 3rd Edition, Central Law Publications.

¹⁵⁸ Dr. Basant K. Sharma, Hindu Law, 3rd Edition, Central Law Publications.



• Can victims of domestic violence claim maintenance only under personal law?

No. The Special legislation on domestic violence i.e., The DV Act, 2005 also has the statutory relief of maintenance for the aggrieved person as well as her children. This may also include an order under Section 125 of the Cr.P.C., 1973.¹⁵⁹

Hindu Marriage Act, 1955

• Who can claim maintenance under Hindu Law?

Under HM Act, 1955, both husband and wife can claim maintenance.

• When can one claim maintenance under Hindu Law?

Maintenance under the HM Act, 1955 is only an ancillary relief i.e., it can be claimed only along with a substantial relief like restitution of conjugal rights, judicial separation, nullity of marriage or divorce. Thus, at the time of filing a petition for any of the above reliefs, one can also file for maintenance pendente lite ¹⁶⁰ and permanent maintenance/ alimony Maintenance pendente lite is a relief that the court will grant on its own irrespective of the principal proceeding whereas permanent maintenance or alimony will be granted or denied only at the time of passing the main relief.

 Can a decree of maintenance under HM Act, 1955 be changed or modified after being ordered?



¹⁵⁹ Section 20, The Domestic Violence Act, 2005

¹⁶⁰ Section 24, The Hindu Marriage Act, 1955

¹⁶¹ Section 25, The Hindu Marriage Act, 1955



Yes. An order of permanent maintenance can be varied, modified, or rescinded by the court if there is a change in circumstances between the parties; or if the party enjoying the maintenance has re-married. 162

• Can Hindus claim maintenance under any other personal law?

A Hindu wife is also entitled to claim maintenance under the Hindu Adoption and Maintenance Act, 1956 [HAM Act, 1956] if the husband has deserted her, treated her with cruelty, committed bigamy or adultery or has ceased to be a Hindu. 163

Special Marriage Act, 1954

What are the two types of maintenance recognised under Special
 Marriage law?

Alimony *pendente lite*¹⁶⁴, Permanent alimony and maintenance¹⁶⁵ are the two types of maintenance recognised under the SM Act, 1954.

• Who can claim maintenance?

Only the wife can claim maintenance under this law.

The Divorce Act, 1869

¹⁶² Section 25 (2), The Hindu Marriage Act, 1955

¹⁶³ Section 18, The Hindu Adoption and Maintenance Act, 1956

¹⁶⁴ Section 36, The Special Marriage Act, 1954

¹⁶⁵ Section 37, The Special Marriage Act, 1954



• What are the types of maintenance recognised under this law?

Alimony *pendent lite*¹⁶⁶ and Permanent Alimony¹⁶⁷ are the two types of maintenance recognised under this law. The former is granted during the pendency of the proceedings and the latter is granted at the time of the final decree of divorce or judicial separation.

• Who can claim maintenance?

Only the wife can claim maintenance under this law 168

• Can the court order permanent alimony as periodic payments?

Yes, the court can order the husband to make weekly or monthly payments to the wife. However, if a situation later arises wherein the husband is unable to make such payments, the court can discharge, modify, or temporarily suspend the order in whole or part and again revive the order as the court deems fit.¹⁶⁹

• To whom shall the maintenance be paid?

Maintenance shall be paid either directly to the wife or to her trustee who is approved by the court.

The Parsi Marriage and Divorce Act, 1936

• Who can claim maintenance?

Both husband and wife can claim maintenance.

What are the two types of maintenance recognised?

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¹⁶⁶ Section 36, The Divorce Act, 1869

¹⁶⁷ Section 37, The Divorce Act, 1869

¹⁶⁸ Section 36 & Section 37, The Divorce Act, 1869

¹⁶⁹ Section 37, The Divorce Act, 1869



Alimony *pendent lite*¹⁷⁰ and Permanent Alimony & maintenance¹⁷¹ are the two types of maintenance recognised under this law. The former is granted during the pendency of the proceedings and the latter is granted at the time of the final decree of divorce or judicial separation.

• Is a decree for permanent alimony and maintenance absolute?

No. A decree for permanent alimony and maintenance can be varied, modified, or rescinded if there is a change in circumstances between the parties or if the decree-holder has remarried, or has sexual intercourse out of wedlock.¹⁷²

• To whom shall the maintenance be paid?

Maintenance can be paid directly to the wife, or her trustee as approved by the court.¹⁷³

Muslim Law

• What are the rights of a Muslim woman at the time of divorce?

A divorced Muslim woman is entitled to the following rights:

- i. A reasonable and fair maintenance by the former husband during the period of 'iddat'.
- ii. In the case of children maintained by the woman after divorce, the former husband has to make payment for maintenance for a period of two years from the respective date of birth of such children.



¹⁷⁰ Section 39, The Parsi Marriage and Divorce Act, 1936

¹⁷¹ Section 40, The Parsi Marriage and Divorce Act, 1936

¹⁷² Section 40 (2) & (3), The Parsi Marriage and Divorce Act, 1936

¹⁷³ Section 41, The Parsi Marriage and Divorce Act, 1936



- iii. *Mahar* or *Dower* as agreed to be paid at the time of marriage. Even if no specific amount is fixed at the time of marriage, legally a Muslim woman has a right to Mehr.
- iv. Properties acquired by the divorced wife before the marriage, at the time of the marriage or after the marriage through relatives, friends, husband or the friends and relatives of the husband.¹⁷⁴

• How can the above rights be enforced in a court?

On the failure to satisfy the above rights, the divorced woman can make an application with the jurisdictional magistrate claiming the above reliefs. 175

What is the penalty/sanction in case of non-compliance with the court order?

Failure to comply with an Order made under Section 3 (3) can result in a warrant for recovery of fine under the Cr.P.C., 1973 and continued default even after the execution of the warrant will result in imprisonment for a period of one year or until payment.¹⁷⁶

• What is an 'iddat' period?

Period of 'iddat' means any of the following:

- i. Three menstrual courses from the date of divorce if subject to menstruation
- ii. Three lunar months after the divorce if not subject to menstruation
- iii. If pregnant at the time of divorce, the period between the divorce and delivery of the child/ termination of pregnancy. 177

¹⁷⁴ Section 3 (1), The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁷⁵ Section 3 (2), The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁷⁶ Section 3 (4), The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁷⁷ Section 2(b), The Muslim Women (Protection of Rights on Divorce) Act, 1986



• Can a Muslim Woman claim maintenance after the 'iddat' period?

Yes, a Muslim divorced woman who has not re-married and is not able to maintain herself can claim maintenance after the 'iddat' period. 178

Who will be directed to pay maintenance to a Muslim divorced woman after her 'iddat' period?

An Order for payment of maintenance after the 'iddat' period can be directed against the following persons: 179

- i. Relatives who would be entitled to inherit her property on her death
- ii. If the divorced woman has children, only the children will be directed to pay maintenance to the woman
- iii. In case the children are unable to pay maintenance, the court will direct the parents of the divorced woman to pay maintenance
- iv. If any of the parents or the relatives above directed are unable to pay maintenance, upon furnishing proof of their inability, the court will direct the maintenance to be paid by any other relatives.
- v. If none of the above persons can make maintenance to the divorced woman, then the court will direct the State Wakf Board to make such maintenance.

• Is there any law in which a Muslim woman can claim maintenance?

Yes, a Muslim woman can claim maintenance under the Cr.P.C., 1973¹⁸⁰ provided that at the time of approaching the court for maintenance both divorced woman and her

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¹⁷⁸ Section 4, The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁷⁹ Section 4 (1) & (2), Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁸⁰ Section 125, The Code of Criminal Procedure, 1973; Mohammed Ahmed Khan v. Shah Bano Begum, AIR 1985 SCR (3) 844



former husband make a declaration or affidavit that they would prefer to be governed under the Cr.P.C., 1973.¹⁸¹

FAQs

61)Can I claim maintenance under the matrimonial laws without filing for divorce or judicial separation?

No. Maintenance under matrimonial laws is an ancillary relief that can be claimed only in incidence with divorce, judicial separation and restitution of conjugal rights. 182

62) Other than personal laws, can maintenance be claimed under any other law?

Yes. Maintenance can be claimed by the wife and children under the Cr.P.C.,, 1973 as well as the DV Act, 2005 irrespective of the matrimonial law under which the marriage is solemnised¹⁸³. Moreover, institution of any matrimonial proceedings is not necessary to claim maintenance under this law.

63) I am in a live-in relationship, and I have a child from that relationship, can I claim maintenance under any of the matrimonial laws?

No. However, the Supreme Court of India through multiple judgments¹⁸⁴ have held that women in a live-in relationship can claim maintenance for herself and the child under the Cr.P.C., 1973¹⁸⁵. A child borne out of such a relationship will be considered legitimate and their right of inheritance is preserved.¹⁸⁶

¹⁸¹ Section 5, The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁸² Section 24 & 25, The Hindu Marriage Act, 1955; Section 36 & 37, The Special Marriage Act, 1954; Section 36 & 37, The Divorce Act, 1869; Section 39 & 40, The Parsi Marriage and Divorce Act, 1936; Section 3 & 4, The Muslim Women (Protection of Rights on Divorce) Act, 1986

¹⁸³ Section 125 – 128, The Cr.P.C., 1973

¹⁸⁴ Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwaha & Ors., (2011) 1 SCC 141

¹⁸⁵ Section 125, The Code of Criminal Procedure., 1973

¹⁸⁶ Bharatha Mata & Ors. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685



64) I have obtained a maintenance order under the DV Act, 2005. Can I seek maintenance under a matrimonial law or the Cr.P.C, 1973 as well?

Yes, additional relief could be sought from other laws as well, as long as previous orders are disclosed to the court.

Reliefs offered under the DV Act, 2005 are minimum and emergent in nature. Moreover, the DV Act, 2005 does not derogate the reliefs available in any other law but only provides an added relief. 187

F. CUSTODY

In a matrimonial proceeding involving children such as divorce, the question of who has to primarily raise the child after the divorce often rises. In such circumstances, where parties are unable to agree upon who should raise the child, they can file for an ancillary relief to get custody of the child or the children.

• What are the factors the court considers for granting custody of a child?

Courts in India have reiterated at multiple instances that the 'welfare of the child is of paramount consideration' in any child custody case. This aspect of welfare can be determined based upon factors such as age, the financial condition of the parents, the relationship between the child and the parent, mental and physical health of the parents, instances of abuse or neglect etc.,

 Can a victim of domestic violence get custody of their child without filing a complaint under the DV Act/ without proceeding for a divorce?

¹⁸⁷ Bhagyashree v. Purshottam, 2022 SCC Online Bom 6583

¹⁸⁸ Chander Dev v. Rani Bala. 1980 HLR 22 (Del)



No. Legal custody of a child can only be ordered/decreed by a court of law. Since custody proceedings under personal laws are drawn-out proceedings, it is advisable to apply for child custody immediately under the DV Act, 2005.

 Is the consent of the child necessary in deciding the petition for child custody?

Child custody proceedings under all personal laws place considerable value on the opinion of the child. 189

What is the age limit for child custody?

Custody can be decided only for a child who is a minor i.e., below the age of 18 years. 190

• When can a parent be denied custody?

A parent may be denied custody if it is found that they ill-treat and neglect the child, if they have bad habits that might adversely affect the child and if they cannot carry out the necessary activities for the development of a child. On deciding custody, the court will decide on the parent or guardian who is in the best interest of the child. 191

Hindu Marriage Act, 1955; Hindu Minority & Guardianship Act, 1956 [Hmg Act, 1956] and Hindu Adoption & Maintenance Act, 1956 [Ham Act, 1956]

• Who can claim custody under Hindu Law?

Both husband and wife can claim custody under Hindu Law.

¹⁹¹ Lahari Sakhamuri v .Sobhan Kodali, (2019) 7 SCC 311

¹⁸⁹ Section 17 (3), Guardians and Wards Act, 1890; Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413; Gayatri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471; Mamta v. Ashok Jagannath Bharuka, (2005) 12 SCC 452

¹⁹⁰ Section 26, The Hindu Marriage Act, 1955



Should maintenance for the child be specifically claimed under Hindu Law?

Maintenance for minor children under Hindu Law can be claimed under Section 26 of the Hindu Marriage Act, 1955 and the Hindu Adoption and Maintenance Act, 1956.

• When will a decree towards child custody be made?

Courts can issue the following Orders towards child custody. 192

- i. Interim order during the pendency of the proceedings
- ii. An order in the decree while deciding the main petition
- iii. After the decree upon an application of the parties
- iv. An Order to revoke, suspend or vary any such order previously made with respect to Child Custody. 193

• Is there an age at which custody will usually be given to the mother?

Yes. Custody of minor children under five will usually be given to the mother. However, if the best interest of the child requires the child to be placed with the father, then the court will decide accordingly.¹⁹⁴

The Special Marriage Act, 1954

• Who can claim custody?

Both husband and wife can claim custody.

• When will a decree towards child custody be made?

Courts can issue the following Orders towards child custody. 195



¹⁹² Section 26, The Hindu Marriage Act, 1955

¹⁹³ Dr. Basant K. Sharma, Hindu Law, 3rd Edition, Central Law Publications.

¹⁹⁴ Section 6(a), Hindu Minority and Guardianship Act, 1956

¹⁹⁵ Section 38, Special Marriage Act, 1954



- i. Interim order during the pendency of the proceedings
- ii. An order in the decree while deciding the main petition
- iii. After the decree upon an application of the parties
- iv. An Order to revoke, suspend or vary any such order previously made with respect to Child Custody.
- Can maintenance be specifically claimed for child custody as well?

Yes, Section 38 of the SM Act, 1954 has provisions for maintenance of the child.

The Divorce Act, 1860

• Who can apply for custody?

Both parents i.e., the husband and wife can file for custody of the child/ children.

• When can one apply for custody?

An application for child custody be made in either a suit for judicial separation, dissolution of marriage or nullity of marriage. 196

• When is an order for child custody granted?

In suits for judicial separation, dissolution of marriage or nullity of marriage, the court before making the final decree can make interim orders with respect to the custody, maintenance and education of the child and also make such provision with respect to child custody made in the final decree of the suit.¹⁹⁷

• Can an application for child custody be made after obtaining a decree of judicial separation or divorce?



¹⁹⁶ Section 41 & 43, The Divorce Act, 1869

¹⁹⁷ Section 41 & 43, The Divorce Act, 1869



Yes. Since the issue of child custody is incidental to the judicial separation or divorce as the case may be, the parties can apply for child custody after obtaining the above decrees. 198

The Parsi Marriage and Divorce Act, 1936

• Who can claim custody of the children?

Both parents can claim custody of the child.

• Is the final decree as to child custody absolute?

The final decree referred herein is the final decree with respect to the main relief i.e., judicial separation/divorce/dissolution wherein in provisions will also be made with respect to the custody of the child/children. Such a final decree with respect to the issue of child custody will not be absolute.¹⁹⁹

How can the final decree on child custody be challenged?

The parties can file an application even after such a final decree to revoke, suspend or vary the child custody orders.²⁰⁰

• Can the parents' property be settled in benefit of the child/children?

In case of divorce/judicial separation on the ground of adultery of the wife, the court may if it thinks reasonable may settle one-half of the wife's property for the benefit of the children borne out of such marriage.²⁰¹

Muslim Law

¹⁹⁸ Section 42 & 44, The Divorce Act, 1869

¹⁹⁹ Section 49, The Parsi Marriage and Divorce Act, 1936

²⁰⁰ Section 42 & 44, The Divorce Act, 1869

²⁰¹ Section 50, The Parsi Marriage and Divorce Act, 1936



• Is there any codified Muslim law on custody of the child/ children?

No, there is no statutory law governing child custody.

• What customary law recognises child custody rights between the parents?

Under Muslim law, the right of 'hizanat' i.e., the right of upbringing governs child custody matters.

What is a mother's right of 'hizanat' under Muslim law?

A mother's right of 'hizanat' is absolute in the case of infancy even if the mother is divorced. This entitles the mother to the custody of a male child till the age of seven and custody of a female child till puberty.²⁰²

- In which cases a mother's right of 'hizanat' will be revoked?
- i. If the mother marries a person within the prohibited degrees of relationship who is not related to the child
- ii. If the mother during the subsistence of the marriage resides at a distance from the child's father's place of residence
- iii. If the mother is leading an immoral life
- iv. If she neglects to take proper care of the child²⁰³
 - Who are all the female relations entitled to the right of 'hizanat' in the absence of the mother?

Mother's mother, Father's mother, full sister, uterine sister, consanguine sister, full sister's daughter, uterine sister's daughter, consanguine sister's daughter, maternal aunt, paternal aunt.²⁰⁴

²⁰² Zahirul Hassan v. State of Uttar Pradesh, Criminal Misc. Application No. 6608 of 1987 (Allahabad High Court)

²⁰³ Zahirul Hassan v. State of Uttar Pradesh, Criminal Misc. Application No. 6608 of 1987 (Allahabad High Court)

²⁰⁴ Rinku Rukshar v. State of U.P. & Ors, (2020) ILR All 185



• When does the father's right of 'hizanat' arise?

Father's right of 'hizanat' arises when the child completes the respective age under the custody of the mother / female relatives or in the absence of the mother / female relatives.²⁰⁵

FAQs

65) I am an NRI, my marriage was solemnised in India under Indian law. My divorce proceedings have been instituted abroad and are pending, can I apply for child custody in India as well?

Any decree obtained abroad must be executed in India as per the CPC, 1908 (Please see here). But with respect to child custody proceedings, even if the same is pending in a foreign court, it can be simultaneously instituted in Indian courts tool, as the welfare of the child is of paramount consideration. ²⁰⁶

66) Can custody proceedings be initiated in any other law other than the matrimonial laws?

Yes. For Hindus, custody proceedings can be initiated under the HMG Act, 1956. custody proceedings can also be initiated under the Guardians and Wards Act 1890 which is a secular law.

²⁰⁶ Ruchi Maioo v. Sanieev Majoo, C.A. <u>No. 4435/2011 & Crl.A. No. 1184/2011 (Supreme Court)</u>

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²⁰⁵ Rinku Rukshar v. State of U.P. & Ors, (2020) ILR All 185



67) I have two children. One major and the other minor. The minor one does not want to leave the father despite him being very abusive. I have filed for divorce, and I want to move out. How should I proceed?

You can apply for child custody of the minor in the pending divorce proceedings. Custody cases are decided in the best interest of the child. Alternatively, as a first course of action, an application for temporary custody²⁰⁷ can also be made under the DV Act, 2005.

G. MISCELLANEOUS

• Can divorce be filed in a foreign court?

Yes, divorce proceedings can be instituted in the jurisdictional court of the foreign country where the party is presently residing. If the said proceeding is contested and decided, it must be executed in India through courts for the same to be valid under Indian law. A foreign decree can be executed in two ways:

- i. In case the foreign country is recognised as a reciprocating country by the Government of India, you can file an execution petition in the jurisdictional district court in India. Reciprocating country herein means "any country or territory outside India which the Central Government may by notification in the Official Gazette, declare to be a reciprocating country for the purposes of this section". ²⁰⁸ (Please see Appendix IV)
- ii. If not, a suit must be initiated on the said judgment/decree

However, in both situations, the said decree must not in merits be contrary to the law in which the marriage was solemnised and must also follow certain conditions

²⁰⁷ Section 21, The Domestic Violence Act, 2005

²⁰⁸ Section 44A (Explanation I), Civil Procedure Code, 1908



laid down in the CPC, 1908 such as court of competent jurisdiction must hear the case, must not be obtained by fraud, must not be in breach of Indian law or natural justice etc.²⁰⁹

 If a proceeding is taking place in one jurisdictional court, can such a proceeding be transferred to another jurisdictional court?

Yes, a matrimonial proceeding can be transferred to a different jurisdiction court provided there are reasonable grounds such as medical treatment, inability to travel, threat and fear etc., for seeking such a transfer. A transfer petition can be filed in the following courts:

- i. District Court, if transfer sought is between two courts in the same district.
- ii. High Court, if the transfer sought is between courts in two different districts in the same State²¹⁰ (Please see Appendix V)

In such instances, the Courts have always held that convenience of the wife must be prioritised over the convenience of the husband.²¹¹

• What is the court procedure for any proceeding instituted under any matrimonial law?

Court proceedings with respect to main relief will usually include a trial wherein evidence of both parties will be taken up and final arguments will be heard while interim reliefs will be disposed of on just written submissions and arguments. Moreover, court procedure varies from district to district, and hence it is best to consult with a legal practitioner practicing in the specific court.

²¹⁰ Section 24, Civil Procedure Code, 1908



²⁰⁹ Section 13, Civil Procedure Code, 1908

²¹¹ N.C.V. Aishwarya v. A.S. Saravana Karthik Sha, Civil Appeal No. 4894 of 2022 (Arising out of SLP (C) No. 16465 of 2021) (Supreme Court)



• In case of non-compliance of a decree herein, how to enforce the same?

All matrimonial laws are regulated by the CPC, 1908 and hence a decree passed therein shall be enforced in a manner prescribed under the CPC, 1908. The manner so prescribed herein is by attaching (securing the property against the person in non-compliance in order to give effect to the said Order/Judgment or Decree) or selling of the property or by civil detention. (Please see Appendix VI)²¹²

• How long do court proceedings go on from the time a case is instituted?

There is no set time frame for how long a court proceeding would go on as they differ from one case to another. However, the HM Act, 1955 & the SM Act, 1954 prescribes that every trial under this Act be disposed of in six months²¹³ although this does not seem to be followed in many cases.

The Hindu Marriage Act, 1955 and The Special Marriage Act, 1954

Where to institute a proceeding under Hindu Law?

To institute any proceeding herein, a petition must be filed in the jurisdictional family court where the marriage was solemnised or where the parties last resided together or where the Respondent is currently residing at the time of presenting a petition. In case, the woman institutes the divorce proceeding, it can be in the place where she is currently residing as well²¹⁴

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²¹² Section 28A, The Hindu Marriage Act, 1955; Section 39 A, The Special Marriage Act, 1954 Section 18, The Family Courts Act, 1984; Section 51, Civil Procedure Code, 1908

²¹³ Section 21B, The Hindu Marriage Act, 1955; Section 40B, The Special Marriage Act, 1954

²¹⁴ Section 19, The Hindu Marriage Act, 1955; Section 31, The Special Marriage Act, 1954



 Is there any ancillary relief that can be claimed along with a petition for divorce/ judicial separation/ restitution of conjugal rights/ nullity under this law?

A relief with respect to custody or maintenance or settling joint property of the husband and wife can also be claimed along with the main relief and the court will decree it accordingly.²¹⁵

For the Respondent i.e., the opposite party can always make counter-claims in a proceeding for divorce, maintenance, child custody etc., and if satisfied, the court may grant the relief to the Respondent.²¹⁶

• What to do if the order pronounced is not favourable?

In such a case, the said order/decree can be appealed within a period of ninety days from the date of the pronouncement in the district court (if the case was heard by a sub court) or the High Court (if the case was heard by a family court).²¹⁷

The Divorce Act, 1869

• In which Court should a proceeding under this law be initiated?

A Petition for relief under this law should be presented in the jurisdictional family court within whose local limits the marriage was solemnised, or the husband and wife last resided together.²¹⁸

• What is the appeal procedure under this law?

²¹⁶ Section 23 A, The Hindu Marriage Act, 1955; Section 35, The Special Marriage Act, 1954

²¹⁵ Section 27, The Hindu Marriage Act, 1955

²¹⁷ Section 28, The Hindu Marriage Act, 1955; Section 39, The Special Marriage Act, 1954 Section 19, Family Courts Act, 1984

²¹⁸ Section 3 (3), The Divorce Act; Section 7, Family Courts Act, 1894



In such a case, the said order/decree can be appealed in the district court (if the case was heard by a sub court) or the High Court (if the case was heard by a family court). An Order of the High Court can then be appealed to the Supreme Court of India. 220

• Is there any other ancillary relief granted along with a petition for divorce/ judicial separation/ restitution of conjugal rights/ nullity under this law?

The Court in case of dissolution or nullity of marriage will make provisions in the final decree for the settlement of the properties acquired pre or post-nuptial for the benefit of the wife, husband or children.²²¹

In case of desertion where the wife is not a Hindu, can apply for a protection order under this law to protect her assets against her husband and his creditors.²²²

The Parsi Marriage and The Divorce Act, 1936

• In which Court should a petition under this law be presented?

To hear suits under this law, special courts have been constituted i.e., Parsi Chief Matrimonial Courts (in presidency towns)²²³ and Parsi District Matrimonial Courts (in other districts)²²⁴. Any suit under this law can be presented before such designated courts.

• What is the procedure for appeal?

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 $^{^{219}}$ Section 28, The Hindu Marriage Act, 1955; Section 39 , The Special Marriage Act, 1954 ; Section 19, Family Courts Act, 1984

²²⁰ Section 56, The Divorce Act, 1869

²²¹ Section 40, The Divorce Act, 1869

²²² Section 27, The Divorce Act, 1869

²²³ Section 19, The Parsi Marriage and Divorce Act, 1936

²²⁴ Section 20, The Parsi Marriage and Divorce Act, 1936



Every appeal under this Act, shall lie before the High Court and must be instituted within three calendar months from the pronouncement of the decree.²²⁵

- What are the grounds under which an appeal could be filed before the High Court?
 - i. Decision being contrary to law or usage having the force of law.
 - ii. Substantial error or defect in procedure or investigation resulting in error or defect in the decision; and
 - iii. In cases where the Parsi Chief Matrimonial Courts and Parsi District Matrimonial Courts grant the leave to appeal under Section 29 (3) of the PMD Act, 1936²²⁶
- When would a decree of judicial separation/nullity/dissolution/divorce be passed?

The Court would pass a decree of judicial separation if it is satisfied that:

- i. The plaintiff has not condoned the act/commission of the defendant.
- ii. The parties are not colluding together
- iii. The plaintiff has not connived at or been an accessory to the act/commission
- iv. There has been no unnecessary or improper delay in instituting a suit
- v. There is no legal ground why relief should not be granted²²⁷
- Can the Court grant relief for the settlement of joint properties?

²²⁵ Section 47(b), The Parsi Marriage and Divorce Act, 1936

²²⁶ Section 47, The Parsi Marriage and Divorce Act, 1936

²²⁷ Section 35, The Parsi Marriage and Divorce Act, 1936



Yes, based on the assets of the parties presented before the court, the court can make provisions in the final decree to settle the joint properties acquired by both parties.²²⁸

Muslim Law

Where to institute a proceeding for divorce/ maintenance/ custody under
 Muslim law?

A proceeding for any of the above-discussed reliefs should be instituted in the jurisdictional (district or taluk) family court. This includes a petition for maintenance under the Cr.P.C., 1973 as the Family Courts are empowered to decide matters under Chapter IX of the Cr.P.C., 1973 i.e., maintenance of wife, children and parents.²²⁹

H. APPLICABILITY TO QUEER INDIVIDUALS

FAQs

68) Are transgender marriages recognised in India?

Personal laws relating to marriage use the term 'man' and 'woman'. The Madurai Bench of the Madras High Court has recognised the right of a transwoman to get married under the Hindu Marriage Act, 1955 and held that a marriage between a transwoman and a man should be registered under the HMA.²³⁰

The same interpretation can be extended to

- marriages between a transwoman and a man under other personal laws
- marriages between a transman and transwoman (or) a woman and a transman under all personal laws

²²⁸ Section 42, The Parsi Marriage and Divorce Act, 1936

²²⁹ Section 7, The Family Courts Act, 1984.

²³⁰ Arunkumar v. Inspector General of Registration, WP (MD) 4125 of 2019 (Madras High Court)



Please Note

- i. This is a far-reaching interpretation of the law and has not been decided/settled by the courts yet.
- ii. Marriages between two transgender persons who do not identify themselves as man/woman/transman/transwoman have not been discussed or decided by courts so far.

69) Are same-sex marriages recognised in India?

Same-sex marriages are not recognised in India yet. Petitions seeking recognition of same-sex marriages are now pending before the Supreme Court of India.²³¹

70) Can persons in same-sex relationship claim maintenance under any law?

Same-sex marriages are not recognized under any law in India thus maintenance cannot be claimed by a party in such a relationship.

71) Are queer individuals entitled to custody of their children?

India is yet to recognise same-sex marriages so custody of children in such marriages do not arise. However, persons from the LGBTQIA+ community can adopt children as single parents.²³² Since, Hindu Law recognises the marriage of trans persons, they are entitled to avail any of the reliefs granted under the said law including custody of the child.



²³¹ Supriya Chakraborthy v. Union of India, WP (Civil) No. 1011/2022 (Supreme Court)

²³² Regulation 5, Adoption Regulation, 2017



LAW ON PROHIBITION OF DOWRY

A. OVERVIEW OF THE APPLICABLE LAWS

The Dowry Prohibition Act, 1961 (DP Act, 1961) is a special legislation enacted to prohibit the evil practice of giving and receiving dowry in the country.²³³ In specific cases where a woman dies within seven years of marriage or dies due to dowry harassment, provisions of the Indian Penal Code, 1860 would apply.

Disclaimer

The information provided in this section is limited to the Dowry Prohibition Act, 1961, the Tamil Nadu Dowry Prohibition Rules, 2004 (TNDP Rules, 2004) and the Indian Penal Code, 1860. The rules enacted by state governments other than Tamil Nadu are not covered under this section.

B. WHAT IS DOWRY?

According to the law, dowry means any property, cash or any valuable security²³⁴ which is agreed to be given by one party to another or by parents of either party (or any other persons of that party) to either party to the marriage or to any other persons before, during or after the marriage. Dowry need not necessarily be in monetary terms, jewellery, or any material object. It could also include any transferable legal document. ²³⁵ It is illegal to demand dowry as a condition of

²³³ Statement of Objects and Reasons, Dowry Prohibition Act, 1961

²³⁴ The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code,1860.

²³⁵ Section 2, The Dowry Prohibition Act, 1961



marriage from the bride or anyone related to the bride as a condition for marriage.

Please Note

Any of the above-mentioned items given as a gift to the bride or the bridegroom, without any demand being made, would not fall under the definition of dowry. ²³⁶

C. HOW IS A COMPLAINT FILED?

• Who can file a complaint under the DP Act, 1961?

The following persons can file a complaint under the DP Act, 1961²³⁷:

- i. The aggrieved person, or
- ii. Parent of the aggrieved person, or
- iii. Relative of the aggrieved person or
- iv. by any recognised welfare institution or organisation (any social welfare institutions or organisations recognised on this behalf by the Central or the State Government)
- Against whom does the aggrieved person have the option of filing a case for demanding dowry? Can the aggrieved person's husband's relatives be charged in such cases?

The aggrieved person can file a case against anybody that demands dowry directly or indirectly, including her fiancé or husband, his parents, his relatives etc. The persons named would be charged if there is basic proof of their involvement in the offence.

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²³⁶ Section 3(2), The Dowry Prohibition Act, 1961

²³⁷ Section 7(1)(b)(ii), The Dowry Prohibition Act, 1961

²³⁸ Section 4, The Dowry Prohibition Act, 1961



• Who should the complaint be directed to?

The complaint should be directed to the Dowry Prohibition Officer (DPO) appointed by the State Government. ²³⁹

• What is the procedure to file a complaint with the DPO?

Firstly, the aggrieved person must identify the DPO of the District and lodge a complaint with the Officer. Thereafter, the DPO would investigate the complaint and offer preventive help to the aggrieved person.

In case the DPO refuses to accept the Complaint, the aggrieved person has the following options:

- i. Lodging an F.I.R. with the jurisdictional police ²⁴⁰
- ii. Filing a complaint before the jurisdictional magistrate²⁴¹
- iii. Approach the jurisdictional High Court, seeking a direction to the DPO to investigate the complaint filed. ²⁴²

In Tamil Nadu, the complaint may be made to the DPO in writing, either in person or through a messenger or by post. ²⁴³

When can the aggrieved person file a complaint? Is there a time limit before which the aggrieved person must initiate a complaint?

In cases where the accused persons have already demanded and taken dowry, the aggrieved person can file a complaint at any point in time and is not bound by any specific time frame.

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²³⁹ Section 8B, The Dowry Prohibition Act, 1961.

²⁴⁰ Section 154, The Code of Criminal Procedure, 1973

²⁴¹ Section 200, The Code of Criminal Procedure, 1973

²⁴² Section 482, The Code of Criminal Procedure, 1973

²⁴³ Rule 4, The Tamil Nadu Dowry Prohibition Rules, 2004



In cases where the accused persons have only demanded dowry and the same hasn't been paid, the aggrieved person is required to file a complaint within 3 years from the date on which the offence was committed. This rule is sometimes relaxed at the discretion of the Court. ²⁴⁴

 What are the types of relief applicable to aggrieved persons in cases of dowry harassment?

The following reliefs are available to the aggrieved person:

- i. Claiming the dowry back, if already paid²⁴⁵
- ii. Preventing further demand for dowry ²⁴⁶
- iii. Protection from further harassment
- iv. In cases where the perpetrator is prosecuted, he would be punished in accordance with the DP Act, 1961.

Please Note

It is not just an offence to take dowry, it is also an offence to pay dowry

FAQs

72) I am a woman, who was married 25 years ago, and my parents were forced to pay a dowry for my wedding. Can I still file a complaint under the law?

Yes, a complaint could be filed even after 25 years as there is no time limit in filing complaints against persons for demanding and taking dowry, although bear in mind that proving a case may be difficult in the absence of evidence.

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²⁴⁴ Section 468, The Code of Criminal Procedure, 1973

²⁴⁵ Section 6, The Dowry Prohibition Act, 1961

²⁴⁶ Section 8B, The Dowry Prohibition Act, 1961 – The Dowry Prohibition Officer would prevent further demand of dowry.



73) My friend is being harassed for dowry, but she is afraid to file a complaint. Can I file a complaint on her behalf?

Yes, any person related to the aggrieved person can file a complaint on behalf of the aggrieved person.

74) I am a victim of dowry harassment, but I do not have documentary evidence to prove the same. Can I still file a complaint?

Yes, a complaint could be filed even if there is no documentary evidence. The concerned officers investigating would consolidate other evidence based on witnesses etc. to determine the case. It may be noted that cases filed without evidence may not always have the desired outcome but that should not deter an aggrieved person from filing a complaint.

D. WHAT HAPPENS AFTER THE COMPLAINT IS FILED?

 Does the aggrieved person need to have evidence to prove dowry harassment?

The aggrieved person is expected to have certain basic evidence in the form of emails, phone calls, text messages, eyewitnesses etc. to prima facie show that they have been subjected to dowry harassment. However, once the case is investigated and reaches the court with evidence of cruelty and harassment, the burden of proving his innocence lies on the accused person. ²⁴⁷

• What are the ways in which the DPO can help the aggrieved person?

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²⁴⁷ Section 8A, The Dowry Prohibition Act, 1961



The DPO would try to prevent, as much as possible, the demand and acceptance of dowry. In case dowry has already been taken, the Officer would collect all the evidence necessary to prosecute the perpetrators. ²⁴⁸

In Tamil Nadu, the DPO would investigate the complaint, undertake surprise checks, and conduct discrete enquiries to ascertain the intensity of the issue and the genuineness of the complaint. He / She would take preventive and remedial measures and would resort to prosecution only if all other measures are found ineffective or parties involved failed to co-operate. ²⁴⁹

Every petition before a DPO would be enquired and it would come to a finding within a month from the date of its receipt. ²⁵⁰

FAQs

75) Who should the aggrieved person approach if the DPO refuses to act on the complaint?

In cases where the DPO refuses to act on the complaint/petition, the aggrieved party has the option of taking the following legal recourse:

- Lodging an F.I.R. with the jurisdictional police ²⁵¹
- Filing a complaint before the jurisdictional magistrate²⁵²
- Approach the jurisdictional High Court, seeking a direction to the DPO to investigate the complaint filed. ²⁵³

²⁴⁸ Section 8B, The Dowry Prohibition Act, 1961

²⁴⁹ Rule 5, The Tamil Nadu Dowry Prohibition Rules, 2004

²⁵⁰ Rule 5 (xiii), The Tamil Nadu Dowry Prohibition Rules, 2004

²⁵¹ Section 154, The Code of Criminal Procedure, 1973

²⁵² Section 200, The Code of Criminal Procedure, 1973

²⁵³ Section 482, The Code of Criminal Procedure, 1973



76) Who should the aggrieved person approach in the absence of a DPO in their locality?

The DP Act, 1961 directs every State Government to make rules for the appointment of a DPO, but the same may not be implemented in all jurisdictions. In that case, the aggrieved person may approach the nearest jurisdictional police station and lodge an F.I.R. or file a complaint with the jurisdictional Magistrate.

Please Note

In Tamil Nadu, the district social welfare officer is also the DPO.

77) What is the penalty/punishment if the accused person is proven guilty?

- Punishment for giving or taking dowry imprisonment for a minimum
 of five years and with a fine which shall not be less than fifteen
 thousand rupees or the amount of the value of such dowry, whichever
 is more. In some cases, the court may order imprisonment for a term
 of less than five years. 254
- Punishment for demanding dowry directly or indirectly imprisonment for a minimum of six months and a maximum of two years and with a fine which may extend to ten thousand rupees. ²⁵⁵

78) Does an Order under the DP Act, 1961 act as evidence in ongoing or future divorce proceedings?

Demanding dowry amounts to cruelty and that entitles the wife to get a decree for dissolution of marriage. ²⁵⁶

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²⁵⁴ Section 3, The Dowry Prohibition Act, 1961

²⁵⁵ Section 4, The Dowry Prohibition Act, 1961

²⁵⁶ Shobha Rani v. Madhukar Reddi,1988 SCR (1) 1010



79) The aggrieved person's parents have already agreed to pay dowry, can they renege on it now?

Any agreement for giving or taking dowry is void, therefore such agreement is not binding, and the aggrieved person and her parents can renege on it. ²⁵⁷

80) What happens to the dowry already given to the woman's husband's family? Can it be claimed back?

Any person who has received dowry shall pay the same back to the woman in connection with whose marriage the dowry was received, within the specified timeframe, which is as follows:

- If the dowry was received before marriage, it shall be paid back within three months after the date of marriage; or
- If the dowry was received at the time of or after the marriage, it shall be paid back within three months after the date of its receipt; or
- If the dowry was received when the woman was a minor, it shall be paid back within three months after she has attained the age of eighteen years.²⁵⁸

81) What happens if the aggrieved person's husband's family refuse to return the dowry to the aggrieved woman?

If the perpetrators refuse to return the dowry, they could be imprisoned for a term which shall not be less than six months, but which may extend to two years or with a fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.²⁵⁹

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²⁵⁷ Section 5, The Dowry Prohibition Act, 1961

²⁵⁸ Section 6(1), The Dowry Prohibition Act, 1961

²⁵⁹ Section 6(2), The Dowry Prohibition Act, 1961



82) What happens to the dowry already given if the woman dies (dowry death or otherwise)? Can the woman's family still claim the dowry back?

Where the woman entitled to receive her dowry back dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it and in the absence of children, the same shall be transferred to her parents.

83) Can the aggrieved person file the complaint for dowry harassment while she is still married? What kind of protection is given to her after she has filed a complaint, given that she may be subject to further harassment if she is still living in the same household?

Yes, the aggrieved party could file a complaint for dowry harassment while she is still married seeking a preventive remedy. In most cases, the DPO, after receiving the complaint would ensure that dowry is not demanded any further. ²⁶⁰These officers are also in charge of ensuring that no woman in their jurisdiction is subject to dowry harassment. In practice, domestic violence proceedings would follow, in case women are subject to harassment in furtherance to a dowry harassment complaint.

84) Is free legal aid available to victims of dowry harassment?

Yes, the government provides free legal aid to victims of harassment including dowry harassment.

E. DOWRY DEATH

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• What is Dowry Death?

²⁶⁰ Section 8B, The Dowry Prohibition Act, 1961



Where a woman died due to any burns or bodily injury and the death occurred under unusual circumstances within seven years of her marriage and it is shown that soon before her death, she was harassed with dowry demands, such death falls under the definition of "dowry death", and the persons involved shall be deemed to have caused her death. ²⁶¹

Usually, in criminal law it is upon the person making the complaint to prove that the person they are accusing has committed the crime. But in cases of dowry the person against whom there is a complaint has to prove that they are innocent given the reverse presumption if the woman died of an unnatural death within seven years of marriage.

Who can file a complaint in such cases? To whom should the complaint be filed?

Any person who knows the offence can file a complaint with the jurisdictional police, and in some cases where suspicion is raised, the police take Suo motto (taking action on its own accord) action by registering an F.I.R. and investigating the crime.

What happens after the complaint is filed?

- i. Once the information about such a death is received, the police register the First Information Report and start investigating the case.
- ii. All crimes under the DP Act, 1961 are non bailable offences. Therefore, a person arrested under this law cannot get bail as a better of right. However, bail can be granted at a judge's discretion.

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²⁶¹ Section 304B (1), The Indian Penal Code, 1860



- iii. During the investigation, they collect evidence, question witnesses, and conclude whether there is sufficient evidence to charge the perpetrators. If there is enough evidence, they prepare a chargesheet which contains details about the perpetrators and the sections of law they are charged with and the same is submitted before the jurisdictional magistrate. The magistrate then takes cognizance of the offence, frames charges and proceeds for trial and a judgement would be delivered thereafter.
- iv. If the police are convinced that there is no merit in the case, they would file a closure report.
- v. Please refer to the section on Procedural laws to know more about the procedure in which these laws are implemented.

• What is the punishment if the accused person is proven guilty?

Persons accused of dowry death, if proven guilty, shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. ²⁶²

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²⁶² Section 304B (2), The Indian Penal Code, 1860



REMEDIES FOR OTHER CRIMES AGAINST WOMEN

The Indian Penal Code, 1860 provides protection for women against various sexual offences. The IPC, 1860 has been amended from time to time to keep it relevant for the present day.

This section aims to set out some of the laws on sexual offences, punishments and the relief or remedies available to the aggrieved person or the victim as prescribed under the IPC, 1860.

A. SEXUAL OFFENCES

Disclaimer

The information provided in this section is limited to specific sexual offences only to provide a wide picture of how laws on sexual offences work. There may be other types of sexual offences which are not included in this section and the reader may have to consult a lawyer for any doubts or clarifications.

I. <u>SEXUAL HARASSMENT</u>

The following are acts of sexual harassment: 263

- a. Physically touching a woman, making unwelcome and explicit sexual advances to her
- b. Demand or request for sexual favours
- c. Showing pornography against her will

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²⁶³ Section 354A, The Indian Penal Code, 1860



d. Making sexually coloured remarks

<u>Punishment:</u> Up to three years imprisonment, or fine, or both for the acts mentioned in 1 (a) (b) and (c) as mentioned above and up to one year imprisonment, or fine, or both for the offence mentioned in 1(d).

Please Note

Only a woman can file such a complaint and such a complaint can be filed only against a man.

II. RAPE

The following acts are rape: ²⁶⁴

- i. When a man
 - a) penetrates with his penis into the vagina, urethra, mouth or anus of a woman without her permission, against her will;
 - b) When a man inserts any object or part of the body (other than the penis) into the vagina, urethra, mouth, anus or any other body part of a woman without her permission, against her will;
 - c) manipulates any part of the body of a woman to penetrate her body;
 - d) applies his mouth to the vagina, urethra, anus or any part of the woman's body
 - e) makes a woman do any of the above stated either with himself or with another man, without her permission, against her will or without her consent

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²⁶⁴ Section 375, The Indian Penal Code, 1860



- ii. It is rape when a man has made a woman agree to the sexual activity by threatening her and putting people close to her at risk.
 - <u>Example:</u> If the victim's mother is held captive and if the victim consents to the sexual activity because her mother's life was at risk, the consent obtained is invalid and it would still amount to rape.
- iii. It is rape when the woman gives consent to the sexual activity thinking it is her lawfully married husband.
- iv. It is rape when a woman's permission for sexual activity is obtained when she is not in a sound state of mind or is intoxicated or is administered any other substance either by the perpetrator/any other person, because of which she is unable to understand the nature and consequences of her consent.
- v. It is rape when a woman is unable to communicate consent.

Please Note

- It is rape even in cases of consensual sex if the woman is under eighteen years of age
- ii. If a woman does not resist the sexual activity, it does not automatically mean that she has given her consent.

Punishment

 i. When any person, other than the category of persons mentioned in Section 376 (2) of the IPC commits the offence: minimum of ten years and a maximum of life imprisonment including a fine.²⁶⁵

²⁶⁵ Section 376 (1), The Indian Penal Code, 1860



- ii. Rape on a woman under twelve years of age: minimum of twenty years and a maximum of life imprisonment (it means imprisonment for the remainder of the person's natural life) including a fine. ²⁶⁶ Any fine imposed would be paid to the victim for medical expenses and rehabilitation of the victim. ²⁶⁷
- iii. Punishment for causing death or vegetative state of victim: minimum of twenty years and a maximum of life imprisonment (it means imprisonment for the remainder of the person's natural life) or with death penalty. ²⁶⁸

Please Note

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted exclusively to protect children under the age of eighteen years from sexual assault, sexual harassment and pornography. So if any person is charged with Section 376AB of the IPC and other Sections in the POCSO Act, then the offender shall be liable to punishment either under POCSO Act or IPC, whichever provides for punishment greater in degree.²⁶⁹

Gang Rape

When a woman is raped by one or more than one person constituting a group with a common intention to rape the woman, it amounts to gang rape and each person involved in the act is said to have committed the offence.

Punishment

²⁶⁶ Section 376AB, The Indian Penal Code, 1860

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²⁶⁷ Section 376, The Indian Penal Code, 1860

²⁶⁸ Section 376A, The Indian Penal Code, 1860

²⁶⁹ Section 42, The Protection of Children from Sexual Offences Act, 2012



- Punishment for gang rape of a woman over 18 years of age: minimum of twenty years and a maximum of life imprisonment (it means imprisonment for the remainder of the person's natural life) including a fine. ²⁷⁰
- Punishment for gang rape of a woman under 16 years of age: imprisonment for life (it means imprisonment for the remainder of the person's natural life) including a fine. ²⁷¹
- Punishment for gang rape of a woman under 12 years of age: imprisonment for life (it means imprisonment for the remainder of the person's natural life) including a fine or with death penalty.²⁷²

Marital Rape

Marital rape is when a husband has sexual intercourse with his wife without her consent. It is still not a crime in India unless the wife is under fifteen years of age. ²⁷³ Alternatively, a woman who is being raped by her husband can obtain judicial separation or annulment of marriage itself or initiate proceedings under the Domestic Violence Laws.

In a recent development, the supreme court in the case of *X v. The Principal Secretary,*Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. ²⁷⁴ held that marital rape could be a ground for termination of pregnancy.

Please Note

A husband is prohibited from having sexual intercourse with his wife, who is living separately, with a legal order of separation or even otherwise unless there is consent

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²⁷⁰ Section 376D, The Indian Penal Code, 1860

²⁷¹ Section 376DA, The Indian Penal Code, 1860

²⁷² Section 376DB, The Indian Penal Code, 1860

²⁷³ Exception 2, Section 375, Indian Penal Code, 1860

²⁷⁴ X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., SLP(Civil) No 12612 of 2022 (Supreme Court)



from the wife. He could be punished with a minimum imprisonment of two years to a maximum of seven years if found guilty. ²⁷⁵

FAQs

76) What is two finger test? Is it legal to perform a two-finger test on a rape victim?

- The two-finger test is an intrusive physical examination, wherein the
 doctor puts two fingers inside the woman's vagina to establish if she is
 sexually active or not. These tests were used to give an opinion on the past
 sexual history of the rape Complainant. This test is no longer valid.
- The Supreme Court in the case of State of *Jharkhand v. Shailendra Kumar Rai @ Pandav Rai*²⁷⁶ stressed that whether a woman is habituated to sexual intercourse or not is irrelevant in determining whether there is consent in a particular case. The Court highlighted that these patriarchal and sexist tests are based on the incorrect assumption that 'a sexually active woman cannot be raped'.

Please Note

Any person who performs a two-finger test while examining a Complainant would be guilty of misconduct.

77) Is the woman's previous sexual activity in any way relevant to determining the character of a woman in relation to her complaint on any sexual offence?

²⁷⁵ Section 376B, The Indian Penal Code, 1860

²⁷⁶The State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, Criminal Appeal No 1441 of 2022 (Supreme Court)



No, the victim's character or her previous sexual experience with any person would not be relevant to the issue of consent, in prosecutions of sexual offences.²⁷⁷

For example, a woman could have had many sexual partners in the past and she could still be raped now. The previous sexual activity would not in any way affect the present criminal case.

78) If someone were to lure a woman into having sexual intercourse under the pretext of marriage, would that constitute an offence of rape?

- If there is a false promise of marriage, with an intention to have sexual intercourse, it constitutes rape because the consent of the woman is obtained based on a false/misconception of a fact.²⁷⁸
- However, if there is a genuine promise of marriage, and sexual intercourse happens in due course but if the couple falls apart later and could not fulfil the promise of marriage, it would not amount to rape. This was held in the case of Pramod Suryabhan Pawar v. The State of Maharashtra²⁷⁹ where the court differentiated between making a false promise and not fulfilling a genuine promise.
- For example, if two people are in love who are willing to get married and have been engaging in sexual activity but eventually a problem occurs and they can no longer get married, that would not be considered a false promise for marriage and it would not be considered rape.

²⁷⁸ Section 90, The Indian Penal Code, 1860

²⁷⁷ Section 53A, The Indian Evidence Act, 1872

²⁷⁹ Pramod Suryabhan Pawar v. The State of Maharashtra, Criminal Appeal No. 1165 of 2019 (@SLP (Crl) No. 2712 of 2019) (Supreme Court)



However, if a person gets sexual favours from a woman, promising her that he
would definitely marry her and later fails the promise, that would amount to
rape.

79) There is no lawful marriage, but the man makes the woman believe that there is a lawful marriage and cohabits and has sexual intercourse with her. Is this legal?

It is an offence for a man to deceive a woman into believing that there is a lawful marriage and to cohabit or have sexual relations with her. It is punishable with imprisonment for a term of up to ten years and a fine. ²⁸⁰

<u>Example</u>: If a man, pretends to marry a woman, and makes her believe that they are in a married relationship to get sexual favours from her but it turns out that there was no lawful marriage, then the man has committed an offence under the law.

80) A woman was raped 25 years ago. Could she still file a complaint? What is the time limit within which complaints should be filed?

Yes, there is no time limit for a woman to file a complaint in cases of rape. However, in practice, there may not be enough evidence to proceed with the investigation if there is a delay in filing the complaint. ²⁸¹

Please refer to the section on procedural law for more information on time limits for complaints.

²⁸¹ Section 468, The Code of Criminal Procedure, 1973

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²⁸⁰ Section 493, The Indian Penal Code, 1860



III. OTHER OFFENCES OF SEXUAL NATURE

• If someone were to take pictures/videos of a woman in the shower and then later disseminate such private images, would that be an offence?

The said circumstance amounts to an offence called Voyeurism. ²⁸² It is also an offence under the law to observe a woman engaging in a private activity, by the perpetrator or somebody else instructed by the perpetrator. Private act here means any circumstance where a reasonable woman would expect privacy, where her private parts are exposed, when she is using the toilet, is in the shower or any private act.

<u>Punishment</u>

For the first time, when someone commits this offence, they are punished with imprisonment for a minimum of one year and a maximum of three years and a fine. A repeat offender is punished with imprisonment for a minimum of three years and a maximum of seven years and a fine.

• If someone were to use force with the intention to disrobe a woman, would it be wrong under the law?

When any person uses force on any woman with an intention to disrobe a woman, or compels a woman to be naked, it is an offence punishable for a minimum of three years and a maximum of seven years and a fine.²⁸³

What constitutes stalking? If someone were to constantly stalk a woman,
 follow her to her workplace etc., would it be wrong under the law?

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²⁸² Section 354C, The Indian Penal Code, 1860

²⁸³ Section 354B, The Indian Penal Code, 1860



When a man constantly contacts or tries to contact a woman to develop personal relationships despite the woman communicating her disinterest, or monitors the use by a woman of the internet or any other digital communication, commits the offence of stalking.

However, if the man proves that he followed the woman for preventing or detecting a crime where the man is entrusted with the responsibility of prevention and detection of crime by the State or if it was a legal requirement to do so or if the situation was reasonable and justified, then, the conduct would not amount to stalking. 284

<u>Punishment</u>

For the first time, when someone commits this offence, they are punished with imprisonment for up to three years and a fine. A repeat offender is punished with imprisonment for up to five years and a fine.

• What is outraging modesty? If someone were to use force against a woman or pulled her, with the intention to outrage her modesty, is that wrong under the law?

When a person assaults or uses criminal force against a woman, knowing that it would outrage her modesty, it is an offence under the IPC punishable with imprisonment for a minimum of one year and a maximum of five years and a fine.²⁸⁵

It was held in the case of Ramkripal v. State of Madhya Pradesh, ²⁸⁶ that the essence of a woman's modesty is her sex. The court explained that the act of pulling a woman,

²⁸⁴ Section 354D, The Indian Penal Code, 1860

²⁸⁵ Section 354, The Indian Penal Code, 1860

²⁸⁶ Ramkripal v. State of Madhya Pradesh, Appeal (crl.) 370 of 2007 (Supreme Court)



and removing her saree, together with a request for sexual intercourse, would be an outrage to the modesty of the woman.

For example, if a man intentionally and forcefully hugs a woman or kisses a woman, it amounts to outrage of modesty.

Please Note

This is a gender-neutral offence and a woman can also be charged for outraging the modesty of another woman.

Can a woman initiate criminal action if someone makes obscene gestures,
 sings songs or passes lewd comments at her in a public place?

Yes, a woman can initiate criminal action against any person, in the above circumstance as it is wrong under the law, punishable for up to three months, or a fine, or both.²⁸⁷

B. LAW ON CYBER-CRIMES, TERMINATION OF PREGNANCY & ACID ATTACKS

This section of the handbook deals with cyber-crimes, termination of pregnancy, acid attacks and touches upon a few other laws pertaining to women.

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²⁸⁷ Section 294, The Indian Penal Code, 1860



Cyber-crimes are usually dealt with by the Indian Penal Code, 1860 and the Information Technology Act, 2000 (IT Act, 2000) both of which have provisions for combatting cyber-crimes.

Termination of pregnancy in India is regulated by the Medical Termination of Pregnancy Act, 1971 which has been amended from time to time and the IPC, 1860 which provides for offences relating to causing miscarriage.

Disclaimer

- i. Cyber law is an evolving field of law owing to technological developments and new types of cyber-crimes are being reported from time to time for which there is no clear definition and punishment prescribed by any law. Therefore, this section aims to give the reader an overall picture of how cyber-crimes are dealt with in general parlance and the reader may want to consult a lawyer for any specific doubts or clarifications.
- ii. This section also touches upon a few other Acts such as the POCSO Act, 2011 etc to make the reader aware of the existence of these laws. However, the same has not been discussed in detail in this handbook and the reader may have to consult a lawyer for any specific doubts or clarifications.

I. Cyber-Crime – Meaning & Scope

Cyber-crime refers to any illegal activity in which a computer is the tool or object of the crime or any incident associated with computer technology in which a victim



suffered or could have suffered loss and a perpetrator, by intention, made or could have made a gain. 288

In simple terms, cyber-crime means any illegal activity which is carried on with the use of computers, internet and other electronic devices. It is pertinent to note that the IT Act, 2000 or any other law does not define cyber-crime.

Women are most commonly exposed to the following cybercrimes:

i. Cyber hacking

Unauthorised access to another person's computer or electronic devices usually to gather private information. ²⁸⁹ Whenever a person deletes or alters any information residing in a computer resource or affects it injuriously by any means with the intention to cause wrongful loss or damage to any person, it constitutes hacking.

Punishment

Up to three years imprisonment and a fine of up to five lakhs.

ii. Cyberstalking

Use of electronic communications to monitor, harass or threaten someone.²⁹⁰ For example, sending threatening emails.

Punishment

Up to three years imprisonment and fine.

²⁸⁸ Professor S.T. Viswanathan, The Indian Cyber Laws with Cyber Glossary, ISBN-10: 8177370243, p.81

²⁸⁹ Section 43A & Section 66, The Information Technology Act, 2008

²⁹⁰ Section 72, The Information Technology Act, 2008; Section 354D, The Indian Penal Code, 1860



iii. Sextortion

Demanding money or sexual favours from women by using private photos or morphed images of women.

iv. Pornography

Women's private images either original or morphed to be used in pornographic sites.

Punishment

Up to five years imprisonment and fine of up to ten lakhs. 291

v. Cyber-bullying

Using social media to create a false, misleading image of a woman and demanding money for the same to be removed. This also includes abusive and hurtful comments on the victim's social media accounts.

Legal Recourse

- Firstly, a victim of any cyber-crime should file a Complaint on the National Cyber Crime Reporting Portal. ²⁹² There is also a mobile helpline number²⁹³ which helps you to pass on the information about the crime within minutes. The victim also has the option to file a written complaint with the cyber cell department in their locality.
- If the victim does not have access to a cyber cell, then they can file a complaint with their jurisdictional police. ²⁹⁴

²⁹³ Cyber-crime helpline number - 1930

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²⁹¹ Section 67A, The Information Technology Act, 2008

²⁹² www.cybercrime.gov.in

²⁹⁴ Section 154, The Code of Criminal Procedure, 1973



FAQs

81)Some person I do not know has been sending me messages on Facebook and Instagram from different accounts despite blocking and warning them. What do I do now?

This constitutes an offence of cyber-stalking. You can file a Complaint on the National Cyber Crime Reporting Portal or file a written complaint with the cyber cell department in your locality and if you do not have access to a cyber cell, then you can file a complaint with your jurisdictional police. ²⁹⁵

82) My photo has been morphed and uploaded to a pornographic site. What do I do now?

It is a serious crime under the law and as mentioned above, you can seek help from the National Cyber Crime Reporting Portal or file a written complaint with the cyber cell department in your locality and if you do not have access to a cyber cell, then you can file a complaint with your jurisdictional police and ask for the photo to be taken down immediately. Thereafter, the concerned authorities would investigate and hold the perpetrator accountable.

II. Acid Attacks

A person intentionally throwing acid to burn or maim or disable or disfigure any part of a women's body will be punished with imprisonment for a minimum of 10 years and a maximum of life imprisonment and a fine. If a person accused of attempting to acid attack is proven guilty, he shall be punished with imprisonment for a minimum of five years and a maximum of seven years and a fine. The court would impose the

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²⁹⁵ Section 154, The Code of Criminal Procedure, 1973



fine under this section to adequately compensate the medical expenses of the victim and it is pertinent to note that all the fines paid under this provision would be paid to the victim. ²⁹⁶ In addition, all hospitals, whether public or private would give free treatment to victims of acid attacks²⁹⁷ and additional compensation could be claimed as well.²⁹⁸

III. <u>Termination of Pregnancy</u>

• Is a woman allowed to have an abortion? If so, until when is she allowed to get the procedure done?

A woman can medically terminate her pregnancy if she is:

- Up to 20 weeks pregnant, with the permission of one registered medical practitioner
- ii. From 20 to 24 weeks, with the permission of two registered medical practitioners
- iii. Beyond 24 weeks pregnant, only by order of the Medical Board if the child so born would suffer from physical or mental abnormalities to put substantial risk to their life or and be seriously handicapped. All states and Union Territories are required to constitute a Medical Board consisting of:
 - a) a Gynaecologist;
 - b) a Paediatrician;
 - c) a Radiologist or Sonologist; and

²⁹⁶ Section 326A & Section 326B, The Indian Penal Code, 1860

²⁹⁷ Section 357C, The Indian Penal Code, 1860

²⁹⁸ Section 357B, The Indian Penal Code, 1860



d) any other member as the government decides

A woman is allowed to terminate her pregnancy within the stipulated time, if the continuance of the pregnancy would risk the physical or mental health of the woman or if the child would suffer from physical or mental abnormalities.

Until the first twenty weeks, pregnancy could be terminated with the approval of one medical practitioner. Approval of two medical practitioners would be necessary to terminate the pregnancy between twenty to twenty-four weeks. ²⁹⁹ After that, permission of the High Court is required.

 Who decides if a woman has to get an abortion? What happens if someone willingly causes a miscarriage to a woman?

Only the pregnant woman has to decide if she would want to get an abortion. If someone voluntarily causes miscarriage to a woman, in bad faith, they may be awarded punishment up to three years imprisonment or a fine or both. If they cause miscarriage after a point where the movement of the child is felt, they may be awarded punishment up to seven years imprisonment and a fine.

Please Note

A woman who causes a miscarriage to herself falls within this section. ³⁰⁰ For example: Instead of getting an abortion, for whatever reason, if a woman causes a miscarriage to herself, then she may be prosecuted under the law.

FAQs

²⁹⁹ Section 3, The Medical Termination of Pregnancy (Amendment) Act, 2021

300 Section 312, The Indian Penal Code, 1860



83) In the case of a married woman, is it necessary to get the consent of the husband before terminating the pregnancy?

No, only the consent of the pregnant woman undergoing the termination of pregnancy is required, the consent of the husband is immaterial. The Punjab & Haryana High Court in the case of *Dr Mangla Dogra and Ors. v. Anil Kumar Malhotra and Ors.* ³⁰¹ held that just because the wife consented to matrimonial sex, it does not mean that she had consented to conceive a child.

Please Note

In the case of a minor woman or a woman who is mentally ill, the written consent of the guardian is required.³⁰²

84) Can an unmarried person terminate their pregnancy?

Yes, an unmarried woman has the same right as that of a married woman to get an abortion. This was recently held by the Supreme Court in the case of *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.* ³⁰³ Now every woman in India, whether married or unmarried can get an abortion for up to twenty-four months.

85) Can a woman initiate criminal action against someone for sexual harassment at workplace? Which laws is applicable in cases like this?

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³⁰¹ Dr Mangla Dogra and Ors vs Anil Kumar Malhotra and Ors, C.R. No.6337 of 2011 (Punjab – Haryana High Court)

³⁰² Section 3(4), The Medical Termination of Pregnancy Act, 1971

³⁰³ X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., Special Leave Petition (Civil) No 12612 of 2022



Yes, a woman can initiate action against sexual harassment at workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would apply in such cases.

86) A woman does not want her name to be revealed anywhere after she terminates her pregnancy. Can confidentiality be preserved in such a case?

Yes, any medical practitioner who terminates the pregnancy of a woman is duty-bound to keep all the information related to the woman confidential. They shall only disclose the information to any person authorised by law if need be. ³⁰⁴

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³⁰⁴ Section 5A (1), the Medical Termination of Pregnancy (Amendment) Act, 2021



CRIMINAL PROCEDURE

A. OVERVIEW OF THE APPLICABLE LAWS

The previous sections of this handbook dealt with various substantive laws, both general and specific. This section deals with the procedure to be followed in implementing the criminal laws discussed in the previous sections. The Code of Criminal procedure, 1973 (CrPC, 1973) is the law that sets out the procedure to be followed in a criminal case and the Indian Evidence Act, 1872 sets out the nature of different types of evidence, the procedure to obtain the same and the weightage different types of evidence holds. These two statutes work hand in hand in criminal cases, alongside other laws. Wherever a specific procedure for implementation of a substantive law has been laid down in that particular Act itself, the same would apply and it would override the provisions of the CrPC, 1973.

Disclaimer

This section aims to give the reader an overall idea about the procedure to be followed in exercising their rights. It has to be borne in mind that the procedure may vary in practice from one jurisdiction to another. The reader may consult a lawyer for specific doubts or clarifications.

B. WHO CAN FILE A COMPLAINT?





A Complaint to the police can be filed by any person who is aggrieved, any person related to the aggrieved person, or any person who only knows some details about the offence and this person need not necessarily be connected to the aggrieved person in any way.

<u>Example:</u> If a person (A) passes by a road and sees another person (B) murdering somebody else (C), then A could file a complaint despite not knowing C.

The Police, on receiving the Complaint would register something called the First Information Report (F.I.R.). An F.I.R. can be filed online (in some cities and states and for some crimes) or by visiting the nearest police station. You can file an F.I.R. if you are (a) a victim of a crime; (b) a relative or friend or acquaintance of the victim; and (c) you have knowledge about a crime that has taken place or is about to take place. An F.I.R. in itself is not a criminal case against someone; it is just information relating to the commission of a crime. A criminal case begs when a chargesheet is filed by the police and a public prosecutor is appointed by the State.

Please Note

The Complainant is entitled to get a free copy of the F.I.R.

FAQs

85) Can I lodge a complaint against unknown persons?

Complaints are often lodged with basic information about the commission of an offence and the Informant/Complainant is not expected to know the perpetrator.



The police, during the course of investigation, would add suspects to the list of accused persons.³⁰⁵

86) I am a victim of an offence. Can I file a complaint with the police directly or should I approach a lawyer to file the complaint?

The victim can file a complaint directly and it is not mandatory to have a lawyer file the complaint. However, the victim may consult a lawyer for better legal guidance.

87) I am a victim of an offence. Should I collect all evidence before filing the complaint?

It is not mandatory to have all the pieces of evidence at the stage of filing a complaint. However, it is advisable to have as much evidence as possible.

Not having evidence at the stage of filing a complaint should not deter a victim from filing the complaint. After filing the complaint, the police would undertake a primary investigation to see if there is any basic proof of the happening of an offence, and thereafter, if the police are convinced that the said offence took place, they would further investigate and collect any additional evidence as may be necessary.

C. HOW IS A COMPLAINT FILED?

A criminal complaint can be initiated

- i. by giving information to the police or³⁰⁶
- ii. filing a complaint with the Magistrate. 307

³⁰⁵ Section 154, The Code of Criminal Procedure, 1973

³⁰⁶ Section 154, The Code of Criminal Procedure, 1973

³⁰⁷ Section 200, The Code of Criminal Procedure, 1973



Information to the police

Information to the police is of two types:

- Information of cognizable offence,³⁰⁸ where in an F.I.R would be lodged³⁰⁹.
- Information of non-cognizable offence,³¹⁰ where the police register an N.C.R (non-cognizable report)³¹¹ but the police cannot start an investigation or arrest the accused without the order of a Magistrate having the power to try such case.

In some cases, information would be recorded in the Community Service Register (CSR) and a CSR number would be given to the Complainant. Thereafter, it would either proceed to the F.I.R stage or a closure report could be filed even without filing an F.I.R if the police are convinced that the primary investigation did not have enough proof to file an F.I.R.

Filing a Complaint with the Magistrate

A complaint could be made orally or in writing to a Magistrate, requesting him to take action against a known or unknown person who has committed an offence. ³¹² Thereafter, he proceeds with the case, reviews evidence, questions witnesses and passes judgement or closes the case, as he deems fit. He also has the power to order the jurisdictional police to conduct an investigation, if necessary. ³¹³

³⁰⁸ Section 2(c), The Code of Criminal Procedure, 1973

³⁰⁹ Section 154, The Code of Criminal Procedure, 1973

³¹⁰ Section 2(I), The Code of Criminal Procedure, 1973

³¹¹ Section 155, The Code of Criminal Procedure, 1973

³¹² Section 200, The Code of Criminal Procedure, 1973

³¹³ Section 2(d), The Code of Criminal Procedure, 1973



FAQs

88) What is the time frame (limitation period) within which criminal action should be initiated?

The time-period within which a complaint has to be lodged is determined based on the punishment type and period.

- i. If an offence is punishable with a fine only, then the complaint has to be lodged within six months.
- ii. If an offence is punishable with imprisonment for a maximum of one year, then the complaint has to be lodged within one year.
- iii. If an offence is punishable with imprisonment for a maximum of three years, then the complaint has to be lodged within three years.
- iv. If an offence is punishable with imprisonment for more than three years, then there is no time limit within which the complaint has to be lodged.

In case there are two or three offences combined, the offence with the more severe punishment would be considered for calculating the period of limitation. In certain cases, the Court may choose to relax the limitation period, if the reasons for the delay in filing a complaint are rightly justified. ³¹⁴

89) What legal recourse is available if the police do not act upon the complaint/information?

If an aggrieved person approaches the police station to lodge an F.I.R but the police refuse to do so, then the person has the following options:

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³¹⁴ Section 468, The Code of Criminal Procedure, 1973



- i. complaint can be given to the Superintendent of the police or Commissioner of police in writing and by post and thereafter, such officers may order an investigation.³¹⁵
- ii. approach the local jurisdictional Magistrate as he is empowered to order an investigation if he deems fit. ³¹⁶

If the above options do not address the issue as expected, the aggrieved person can approach the jurisdictional high court seeking direction to be issued by the Court to the officers to register an F.I.R. 317

Please Note

It is mandatory for the police to register an FIR in case of a sexual crime such as rape, sexual harassment, etc.

90) Can the identity of the victim and witnesses be protected from being revealed, owing to privacy and security reasons?

- The identity of victims of rape is often not disclosed and the law prohibits media houses from revealing the identity of the rape victims. ³¹⁸
- In the case of *Nipun Saxena v. Union of India*³¹⁹, the Supreme Court imposed an absolute bar on disclosing the identity of victims of rape and sexual offences and also stated that, even if the victim is dead, her dignity ought to be protected. Witnesses of some cases, who face threats, are protected by the Witness Protection Scheme, 2018.

91) What is a Zero F.I.R. and when will a Zero F.I.R. be registered by the Police?

³¹⁵ Section 154 (3), The Code of Criminal Procedure, 1973

³¹⁶ Section 156(3), The Code of Criminal Procedure, 1973

³¹⁷ Section 482, The Code of Criminal Procedure, 1973

³¹⁸ Section 228A, The Indian Penal Code, 1860

Nipun Saxena v Union of India, WP (Civil) No. 565 of 2012 (Supreme Court)



Unlike an F.I.R, which is restricted by jurisdiction, a zero F.I.R. can be filed in any police station, regardless of whether the offence was committed under the jurisdiction of that particular police station or not. All F.I.Rs have serial numbers assigned to them whereas zero F.I.Rs are assigned the number '0'. The zero F.I.R. so filed is later transferred to the police station within whose jurisdiction the case has to be filed. ³²⁰

92) What is the role of the government in a criminal case?

- In criminal courts, it is usually the State that initiates criminal proceedings and conducts the criminal case against the accused for committing a crime (it is not done by the aggrieved person or the victim). The role of the victim is to lodge a complaint.
- Most criminal cases would be titled State v xxx (Name of the accused person).
 This is based on the principle that any crime is an offence against the state and not just the individual. The ruling government in a State would conduct the prosecution by appointing a Public Prosecutor (government criminal lawyer).³²¹
- The victim or the victim's lawyer can only assist the prosecution wherever necessary but cannot conduct the prosecution. The Supreme Court in the case of *Rekha Murarka v. The State of West Bengal*³²² passed as recently as in November 2019 held that ".... the victim's counsel is only intended to have a secondary role qua the Public Prosecutor...".
- Therefore, a victim's advocate can assist the prosecution and if permitted by the court file written submissions but they cannot argue the case or crossexamine the witnesses.³²³



³²⁰ The concept of zero F.I.R was introduced after the commendation of the Justice Verma Committee in the Criminal Law Amendment Act, 2013 after the Nirbhaya case.

³²¹ Section 24 (7) & Section (8), The Code of Criminal Procedure, 1973

³²² Rekha Murarka v. The State of West Bengal, Criminal Appeal No. 1727 of 2019 [Arising out of SLP (Crl.) No. 7848 of 2019] (Supreme Court)

³²³ Section 301(2), The Code of Criminal Procedure, 1973



93) What is the basic difference between F.I.R. & complaint?

- i. Any complaint or information given to a police officer which is later registered by the police in accordance to the procedure laid out in the Cr.P.C., 1973 is called the First Information Report. ³²⁴ A FIR can be filed with the police for cognizable offences.
- ii. Any complaint, whether oral or written, given to the Magistrate, is referred to as a Private complaint. ³²⁵ Unlike an FIR, a private complaint can be made for both cognizable and non-cognizable offences.

94) Will the Complainant be given a copy of the F.I.R.?

It is mandatory for the police to give a copy of the F.I.R. to the Complainant free of cost. ³²⁶

95) What is bail?

Bail is granted for the release of a person from police or judicial custody. ³²⁷ Depending on the nature and stage of a case, there are three common types of bail.

- i. Regular Bail granted to a person who has been arrested and is in police custody.
- ii. Interim Bail granted for a short period pending the decision of the main bail application and it is granted before the hearing for the regular bail. 328

³²⁴ Section 154, The Code of Criminal Procedure, 1973

³²⁵ Section 2(d), The Code of Criminal Procedure, 1973

³²⁶ Section 154 (2), The Code of Criminal Procedure, 1973

³²⁷ Chapter XXXIII, The Code of Criminal Procedure, 1973

³²⁸ Section 437 and 439, The Code of Criminal Procedure, 1973



iii. **Anticipatory Bail** – granted to a person who is concerned that he may be arrested by the police.³²⁹

Please Note

Bail can be granted in non-bailable cases as well, at the discretion of the court. Non-bailable offence does not mean that bail would not be granted at all, it means bail cannot be claimed as a matter of right.

96) Can a bail that has already been granted be cancelled?

Yes, the Courts have the power to cancel the bail already granted after reevaluating circumstances.³³⁰ Bail can be cancelled if the Court feels that during the proceedings the accused is trying to abscond or flee or intimidating, bribing or tampering with witnesses.

97) Is there a specific authority in Tamil Nadu to whom women could direct their complaints about sexual offences?

The government of Tamil Nadu has created a special wing called Crimes Against Women and Children (CAWC). This is an attempt to bring various departments such as all women police station, anti-human trafficking unit, special juvenile police unit and child welfare police office, under one roof and will be led by an additional deputy commissioner of police (ADCP) level officer. This is still in the preliminary stages, however, women victims in Tamil Nadu can approach these officers for special assistance.

D. WHAT HAPPENS AFTER A COMPLAINT IS FILED?

I. Investigation & Arrest

³³⁰ Section 439 (2), The Code of Criminal Procedure, 1973

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³²⁹ Section 438, The Code of Criminal Procedure, 1973



The police conduct the investigation and usually, an investigation officer is appointed for each case. ³³¹ After the F.I.R is registered by the police, the investigation happens and evidence is collected as per law. Evidence plays a crucial role in deciding whether a case would reach the court for trial. ³³²

The police after finishing the investigation and collecting the necessary evidence, prepare a report. This marks the completion of the investigation. It is of two types:

- i. Closure Report A closure report is done when the police do not have sufficient evidence to demonstrate that the said offence has been committed by the accused. A closure report is filed to mark the end of a case.
- ii. Chargesheet Chargesheet is a formal police record showing the names of each accused, the nature of the accusations, the identity of the accusers, information about witnesses, evidence collected and all other information that was collected during investigation.

As soon as the chargesheet is completed, the same would be forwarded to the local jurisdictional Magistrate for taking cognizance of the offence. ³³³

FAQs

98) What if the police file a closure report despite there being evidence to show the commission of offence?

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³³¹ Section 156, The Code of Criminal Procedure, 1973

³³² The Indian Evidence Act, 1872

³³³ Section 173, The Code of Criminal Procedure, 1973



If a person filing the complaint is convinced that the police have wrongly filed a Closure report, the Complainant has the option of filing a protest petition before the jurisdictional Magistrate stating their dissatisfaction and request for further investigation under court supervision. 334

99) What is the procedure to arrest a woman offender?

Other than exceptional circumstances, a woman cannot be arrested before sunrise or after sunset. A women officer only after obtaining the permission of the judicial Magistrate can arrest a woman. 335

II. Trial Stage

Commencement of trial – The Trial of a case would commence at the appropriate court, and the accused person/persons would be allowed to plead guilty or not – guilty to the offence(s) charged against them. If the accused(s) says they/he/she has not committed the said offence, only then the trial would begin. Witnesses would be cross-examined, evidence presented and the court would give its verdict based on the evidence and the statements of witnesses. 336

Any party that is not satisfied with the verdict of the trial court, can appeal the judgment before the appropriate forum.

FAQs

100) Who is a Public Prosecutor? What is the importance of a Public Prosecutor in the criminal justice system?

³³⁴ Section 200, The Code of Criminal Procedure, 1973

³³⁵ Section 46(4), The Code of Criminal Procedure introduced by virtue of Section 6, Criminal Law Amendment

³³⁶ Chapter XVIII, XIX, XX and XXI, The Code of Criminal Procedure, 1973



He is an appointee of the State and represents the State in criminal proceedings. In India when the need to prosecute a case arises the decision is taken by the Magistrate on the final report submitted by the police and then the Prosecutor is appointed.

101) What do *in-camera* proceedings mean? In what circumstances can a request for *in-camera* proceedings be made?

All case proceedings in courts are open to the public. However, *in-camera* proceedings, which mean private proceedings in the absence of the public and press is usually held in criminal trials involving rape as an offence. It is suggested that women judges should preside over *in-camera* proceedings as far as possible and the press shall not publish any news from such proceedings.³³⁷ In other cases, which are sensitive, the presiding judge may choose to have the proceedings *in-camera*, or a petition could be made seeking such proceedings.

III. Compensation

An order for compensation would be made in the following circumstances:

- When a court imposes a fine in a case, the full amount or a part of it would be paid to the victim
- ii. When there is any loss or injury caused to the victim and if the court thinks that a sum of money would be recoverable if the victim had filed the case in a civil court.
- iii. When a person has killed another, the victim is entitled to recover the loss due to the death of the person (specifically under the Fatal Accidents Act, 1855)³³⁸

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³³⁷ Section 327, The Code of Criminal Procedure, 1973

³³⁸ Section 357, The Code of Criminal Procedure, 1973



Victim compensation scheme

The state government and central government have prepared a scheme to compensate the victims for their loss and also cover the costs of rehabilitation. After completion of the trial, considering the circumstances, if the court deems fit to grant compensation, it would do so by making a recommendation to the District Legal Service authority or the State Legal Service Authority and they would decide the quantum of compensation.

There are some cases where the fine paid by the convict would not be sufficient to compensate the victim, in that case, these authorities pay the compensation. There are some other cases where the accused would be acquitted, where no fine would be paid but the victim has to be compensated and rehabilitated. These authorities step in those cases as well.

If the accused is not identified and the trial does not take place, the victim has to make an application to the District Legal Service authority or the State Legal Service Authority for an award of compensation. It is pertinent to be noted that once an application is made, the authority should complete the enquiry and decide on the application within two months from the date of making the application and this compensation shall be in addition to the compensation prescribed in specific sections of the law. 340

FAQs

³³⁹ Section 357A, The Code of Criminal Procedure, 1973

³⁴⁰ Section 357B, The Code of Criminal Procedure, 1973



102) In what cases are victims given special medical treatment?

All hospitals, be it public or private, ought to provide free medical aid to acid attack victims and rape victims and the hospital is bound to immediately inform the police about the same.³⁴¹

³⁴¹ Section 357C, The Code of Criminal Procedure, 1973



PROTECTIONS IN INTERNATIONAL

• What International Laws on women are enforceable in India?

There are many international instruments for the protection of women, however, only conventions and treaties that are ratified by India are of binding value i.e., enforceable in courts in India. Conventions / Declarations so ratified with respect to women are as follows.

- i. Universal Declaration of Human Rights (UDHR), 1948
- ii. International Covenant on Civil and Political Rights (ICCPR), 1966
- iii. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- iv. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

• What kind of rights/ protection are granted under such law for women?

Equality between men and women with respect to their civil and political rights³⁴², fair wage and equal remuneration for work, equal work conditions³⁴³, prohibition and elimination of all forms of discrimination against women³⁴⁴, suppress all forms of trafficking and exploitation of women³⁴⁵, equal rights to women to change, acquire or retain their nationality, right to family benefits³⁴⁶ are some of the rights granted under the International Laws ratified by India.



³⁴² Article 3, International Covenant on Civil and Political rights, 1966

³⁴³ Article 7, International Covenant on Economic, Social and Cultural Rights, 1966

³⁴⁴ Article 2, 7, 8,10, 11, 12, 14, 15, 16, Convention on the Elimination of All Forms of Discrimination Against Women, 1979

³⁴⁵ Article 6, Convention on the Elimination of All Forms of Discrimination Against Women, 1979

³⁴⁶ Article 13, Convention on the Elimination of All Forms of Discrimination Against Women, 1979



• Is there any specific international law on domestic violence or violence against women?

There is no binding convention specific on domestic violence or violence against women but the same has been read through the provisions of other conventions such as UDHR, ICCPR, ICESCR, CEDAW and Convention against Torture or Other Cruel Inhuman or Degrading Treatment or Punishment, 1985. However, all the countries in the United Nations General Assembly have adopted the *Declaration on the Elimination of Violence against Women, 1993*³⁴⁷ including India which condemns various kinds of violence against women (*physical, sexual, psychological*) occurring in private and public life and those perpetrated by the State.

FAQs

103) Can I file a complaint for the violation of any right recognized in such International Laws?

No. Every Convention will have a committee monitoring the implementations of the convention in the countries that have ratified it. Only when a country recognizes the competency of such a committee, an individual can directly file a complaint with the committee.³⁴⁸ India has not recognized the competency of the committees monitoring any of the above conventions.

104) What are the other ways in which I can enforce my rights conferred under such International Law?

Implementation of International Law differs from one country to another. In
 India, International Law is implemented by the parliament enacting national



³⁴⁷ UNGA Resolution 48/104 dated 20 December, 1993

³⁴⁸ Article 1, Optional Protocol I, 1966 (ICCPR); Article 2, Optional Protocol, 2008 (ICESCR); Article 2, Optional Protocol, 1999 (CEDAW)



laws on the rights conferred in such international conventions. Some of the domestic/ national laws enacted in such a way are as follows.

- i. CEDAW Sexual Harassment of Women at Workplace
 (Prevention, Prohibition & Redressal) Act, 2013³⁴⁹
- ii. The DV Act, 2005³⁵⁰
- An aggrieved person can enforce their right by invoking the provisions in such domestic/ national laws. Alternatively, rights recognized in conventions ratified by India can also be invoked to supplement the national rights/ protections before the courts in India.

105) When and how should I invoke rights conferred in International Law?

International Law can be invoked before courts in relation to violations of fundamental rights or when no particular law in India covers the said legal injury.³⁵¹

106) Is there a way to invoke International Laws not enforceable in India?

Certain aspects of international conventions not ratified in India have been given a status beyond conventional values and it is known as the customary international law or *jus cogens* by all nations.

For example, India has not ratified the Convention against Torture or Other Cruel Inhuman or Degrading Treatment or Punishment, 1985 but a prohibition on torture is considered to be *jus cogen* law i.e., it supersedes conventional written law and treaties which would otherwise allow it. Rights/Protections which are said to have attained such level can be raised before courts in India.



³⁴⁹ Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2018

³⁵⁰ Vandhana v. T. Srikanth & Ors., O.A. No. 764 of 2007 in C.S. No. 548 of 2007 (Madras High Court)

³⁵¹ Article 51(c), The Constitution of India, 1950



107) Other than Indian Courts, is there any International Court that I can approach for the violation of my right in India?

No, a country must accept the jurisdiction and authority of international human rights courts (ECHR, AfCHPR, IACHR)³⁵² for the citizens of a country to approach the said court. Even then, an Individual can only approach when he or she has exhausted all domestic remedies. India is not part of any present regional blocs which has an established International Human Rights Court, so the court of last resort in India is the Supreme Court of India.

108) Does International Law apply directly to individuals?

Codified International law traditionally only applies to countries and not directly to individuals. But new fractions of international law govern individuals and entities alike directly. With respect to human rights law, its application to individuals directly has been recognized by certain countries especially so when such countries have formed regional blocs. In India, international human rights even under the conventions so ratified are still only supplementary and cannot be invoked by a citizen directly even as a last resort i.e., no application can be filed by a citizen of India in any courts in India under any provision of any International Law.

109) Can I, an Indian citizen, invoke International Law in countries where the same applies to individuals directly?

Cases are appealed to International Human Rights Courts when the State acceding to its jurisdiction has committed a violation. The scope of such jurisdiction



³⁵² ECHR – European Court of Human Rights; AfCHPR – The African Court on People and Human Rights; IACHR – Inter American Court of Human Rights



depends not only on the charter of such courts but also on the applicability of the law to non-citizens in which the violation has occurred.³⁵³

For Example, Countries in the European Union have not only undertaken to secure the fundamental rights of their citizens but also their non-citizens. In such case, if a member state commits a violation against an Indian citizen living within its jurisdiction, the said person can appeal to the European Court of Human Rights as a last resort.

³⁵³ European Charter on Human Rights, 1950; Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights; American Convention on Human Rights 1969

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REFERENCES

I. STATUTES

- 1. Adoption Regulations, 2017
- 2. <u>Civil Procedure Code, 1908</u>
- 3. Code of Criminal Procedure, 1973
- 4. Dissolution of Muslim Marriages Act, 1939
- 5. Divorce Act, 1869
- 6. Dowry Prohibition Act, 1961
- 7. Family Courts Act, 1984
- 8. Hindu Marriage Act, 1955
- 9. Hindu Adoption and Maintenance Act, 1956
- 10. Hindu Minority & Guardianship Act, 1956
- 11. Indian Evidence Act, 1872
- 12. Indian Penal Code, 1860
- 13. Muslim Personal Law (Shariat) Application Act, 1937
- 14. Muslim Women (Protection of Rights on Divorce) Act, 1986
- 15. Parsi Marriage and Divorce Act, 1936
- 16. Protection of Women from Domestic Violence Act, 2005
- 17. Protection of Women from Domestic Violence Rules, 2006
- 18. Special Marriage Act, 1954
- 19. Tamil Nadu Dowry Prohibition Rules, 2004
- 20. The Information Technology Act, 2008
- 21. The Medical Termination of Pregnancy (Amendment) Act, 2021.
- 22. The Medical Termination of Pregnancy Act, 1971
- 23. The Protection of Children from Sexual Offences Act, 2012





CONVENTIONS/ DECLARATIONS

- 1. Universal Declaration of Human Rights (UDHR), 1948
- International Covenant on Civil and Political Rights (ICCPR), 1966;
 Optional Protocol I, 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR),
 1966; Optional Protocol, 2008
- 4. Convention on the Elimination of All Forms of Discrimination Against
 Women (CEDAW), 1979; Optional Protocol, 1999
- 5. <u>Declaration on the Elimination of Violence Against Women, 1993</u>
- 6. <u>Convention against Torture and Other Cruel, Inhuman or Degrading</u>

 Treatment or Punishment, 1984
- 7. European Convention on Human Rights, 1950
- 8. Protocol to the African Charter on Human and People's Rights on the

 Establishment of an African Court on Human and People's Rights, 2008
- 9. American Convention on Human Rights 1969



APPENDIX I

FORM I: PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

FORM I

[See rule 5(1) and (2) and 17(3)]

Domestic Incident Report under sections 9 (b) and 37 (2) (c) of the Protection of

Women from Domestic Violence Act, 2005 (43 of 2005)

- 1. Details of the complainant/aggrieved person
 - (1) Name of the complainant/aggrieved person:
 - (2) Age:
 - (3) Address of the shred household:
 - (4) Present Address:
 - (5) Phone Number, if any:
- 2. Details of Respondents:

S. No.	Name	Relationship with the aggrieved person	Address	Telephone No, if any.

- 3. Details of children, if any, of the aggrieved person:
 - (a) Number of Children:
 - (b) Details of children:

	Name	Age	Sex	With whom at present residing
١				

4. Incidents of domestic violence:

S. No.	Date, place	Person who	Types of violence	Remarks
	and time of violence	caused domestic violence	Physical violence	
			Causing hurt of any kind, please specify.	





	(ii) Sexual violence			
Please tick mark [☑] the column applicable.				
	Forced sexual intercourse. Forced to watch pornography or other obscene material Forcibly using you to entertain others Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):			
(ii)	verbal and emotional abuse			
	Accusation/aspersion on your character or conduct, etc. Insult for not brining dowry, etc. Insult for not having a male child. Insult for not having any child Demeaning, humiliating or undermining remarks/statement Ridicule Name calling Forcing you to not attend school, college or any other educational institution. Preventing you from taking up a job Preventing you from leaving the House Preventing you from meeting any particular person Forcing you to get married against your will Preventing you from marrying a person of your choice			





	Forcing you to marry a person of his/their own choice Any other verbal or emotional abuse (please specify in the space provided below)
--	--

(iii) Economic violence

Economic violence	
Not providing money for maintaining you or your children	
Not providing food, clothes, medicine, etc, for you or your children.	
Forcing you out of the house you live in.	
Preventing you from accessing or using any part of the house.	
Preventing or obstructing you from	
carrying on your employment.	
Not allowing you totake up an employment.	
Non-payment of rent in case of a rented accommodation	
Not allowing you to use clothes or articles of general household use.	
Selling or pawing your stridhan or any other valuables without informing you and without your consent.	
Forcibly taking away your salary, income or wages etc.	
Disposing your stridhan	
Non payment of other bills such as electricity, etc.	
Any other economic violence (please specify in the space provided below)	





(iv) Dowry related harassment

			 Demands for dowry made, please specify; Any other detail with regard to dowry, please specify. Whether details of dowry items, stridhan, etc. attached with the form Yes No 	
(v) any other information regarding acts of domestic violence against you or your children				

(Signature or thumb impression of the complainant/aggrieved person)

5. List of documents attached

Name of document	Date	Any other detail
Medico legal certificate		
Doctor's certificate or any other prescription		
List of Stridhan		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005

S. No.	Orders	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21'		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

7. Assistance that you need





S. No.	Assistance available	Yes/No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter home		
(5)	Medical facilities		
(6)	Legal aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this From discloses an offence under the Indian Penal Code or any other law, the police officer shall-

- (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1973)
- (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily dairy entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.
- (c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

(Counter signature of Protection Officer/Service provider)

Place: Name: Date: Address:

(Seal)

Copy forwarded to:-

- 1. Local Police Station
- 2. Service Provider/Protection Officer
- 3. Aggrieved person
- 4. Magistrate





APPENDIX II

FORM II: PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

FORM II

[See rule 6(1)]

Application to the Magistrate under section 12 of the Protection of Women from

Domestic Violence Act, 2005 (43 of 2005)

		,,
	То	
	The court of Magistrate	

		Application under sectionof the
		Protection of Women from Domestic Violence
		Act,2005 (43 of 2005)
SHOWE	TH:	
	 That the application under section Domestic Violence Act, 2005 is being Incident Report by the:- 	
	(a) Aggrieved person	
	(b) Protection Officer	
	(c) Any other person on behalf of aggrieved person	the 🛅
	(tick whichever is applicable)	
	It is prayed hat the Hon'ble complaint/Domestic Incident Report deemed necessary in the circumstance	and pass all/any of the orders, as
	(a) Pass protection orders under sec	tion 18 and /or
	(b) Pass residence orders under sec	tion 19 and /or
	(c) Direct the respondent to pay and /or	monetary relief under section 20
	(d) Pass orders under section 21 of	the act and /or
	(e) Direct the respondent to gran section 22 and /or	t compensation or damages under
	(f) Pass such interim orders as the o	court deems just and proper;
	(g) Pass any orders as deems fit in t	the circumstances of the case.





3. Orders required:

(i) Protection Order under section 18
Prohibiting acts of domestic violence by granting an injunction against the Respondent/s from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application Prohibiting Respondent(s) from entering the school/college/workplace
Prohibiting from stopping you from going to your place of employment
Prohibiting Respondent(s) from entering the school/college/any other place of your children
Prohibiting from stopping you from going to your school
Prohibiting any form of communication by the Respondent with you
Prohibiting alienation of assets by the Respondent
Prohibiting operation of joint bank lockers/accounts by the Respondent arid allowing the aggrieved person to operate the same
Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
Any other order, please specify
(ii) Residence Order under section 19
An order restraining Respondent (s) from
Dispossessing or throwing me out from the shared household
Entering that portion of the shared household in which I reside
Alienating/disposing/encumbering the shared household
Renouncing his rights in the shared household
An order entitling me continued access to my personal effects
An order directing Respondent (s) to
Remove himself from the shared household
 Secure same level of alternate accommodation or pay rent for the same



Any other order, please specify



iii) Monetary reliefs under section	20
Loss of earnings, Amount claimed	
Medical expenses, Amount claimed	
Loss due to destruction/damage control of the aggrieved person.	e or removal of property from the
Amount claimed	
Any other loss or physical or m 10 (d)	ental injury as specified in clause
Amount claimed	
Total amount claimed	
Any other order, please specify	
iv) Monetary reliefs under section	20
Directing the Respondent to monetary relief:	pay the following expenses as
Food, clothes, medications and other basic necessities,	Amount per month
School fees and related expenses	Amount per month
Household expenses	Amount per month
Any other expenses	Amount per month
	Total Per month
Any other order, please specify	

(v) Custody Order under section 21





children to the
Any other person on her behalf, details of such person
(vi) Compensation order under section 22
(vii) Any other order, please specify
please specify
4. Details of previous litigation, if any
(a) Under the Indian Penal Code, Sections Pending in the court of
Disposed off, details of relief
(b) Under CrPC, SectionsPending in the court of
Disposed off, details of relief
(c) Under the Hindu Marriage Act, 1956, SectionsPending in the court of
Disposed off, details of relief
(d) Under the Hindu Adoptions and Maintenance Act, 1956, SectionsPending in the court of
Disposed off, details of relief
(e) Application for Maintenance, act
Interim p.m.
Maintenance p.m.
(f) Whether Respondent was sent to Judicial Custody For less than a week For more than a month
Specify





ре	eriod		
(g) order	Any	other	

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief (s) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place

Dated:

COMPLAINANT/AGGRIEVED PERSON

THROUGH

COUNSEL

VERIFICATION:

Verified at(place) on this day of that the contents of Paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

Countersignature of Protection Officer with date.

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APPENDIX III

FORM IV: PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

Form IV

[See rule 8(1) (ii)|

Information on rights of aggrieved persons under the Protection of Women from Domestic Violence Act, 2005

- 1. If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from Domestic Violence Act, 2005, gives you the right to claim protection and

assistance against domestic violence.
2. You can receive protection and assistance under the Act, if the person(s)with whom you are/were residing in the same house, commits any of the following acts of violence against you or a child in your care and custody -
1. Physical Violence:
For example-
(i) Beating,
(ii) Slapping,
(iii) Hitting,
(iv) Biting,
(v) Kicking,
(vi) Punching,
(vii) Pushing,
(viii) Shoving or
(ix) Causing bodily pain or injury in any other manner.
2. Sexual Violence:
For example-
(i) Forced sexual intercourse;
(ii) Forces you to look at pornography or any other obscene pictures of material;

(iii) Any act pf sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature;

(iv) Child sexual abuse

3. Verbal and Emotional Violence:

For example-

(i) Insults;



- (ii) Name-calling;
- (iii) Accusations on your character or conduct etc.;
- (iv) Insults for not having a male child,
- (v) Insults for not bringing dowry etc.;
- (vi) Preventing you or a child in your custody from attending school, college or any other educational institution;
- (vii) Preventing you from taking up a job;
- (viii) Forcing you to leave your job;
- (ix) Preventing you or a child in your custody from leaving the house;
- (x) Preventing you from meeting any person in the normal course of events;
- (xi) Forcing you to get married when you do not want to marry;
- (xii) Preventing you from marrying a person of your own choice;
- (xiii) Forcing you to marry a particular person of his/their own choice;
- (xiv) Threat to commit suicide;
- (xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example-

- (i) Not providing you money for maintaining you or your children,
- (ii) Not providing food, clothes, medicines etc. for you or your children,
- (iii) Stopping you from carrying on your employment or,
- (iv) Disturbing you in carrying on your employment,
- (v) Not allowing you to take up an employment or
- (vi) Taking away your income from your salary, wages etc. or
- (vii) Not allowing you to use your salary, wages etc.,
- (viii) Forcing you out of the house you live in,
- (ix) Stopping you from accessing or using any part of the house,
- (x) Not allowing use of clothes, articles or things of general household use,
- (xi) Not paying rent if staying in a rented accommodation, etc.
- 3. If an act of domestic violence is committed against you by a person/s with whom you are/were residing in the same house, you can get all or any of the following orders against the person(s)-





(a) Under section 18:

- (i) To stop committing any further acts of domestic violence on you or your children;
- (ii) To give you the possession of your stridhan, jewellery, clothes etc.
- (iii) Not to operate the joint bank accounts or lockers without permission of the court

(b) Under section 19:

- (i) Not to stop you from residing in the house where you were residing with the person/s; (ii) Not to disturb or interfere with your peaceful enjoyment of residence,
- (iii) Not to dispose off the house in which you are residing.
- (iv) If your residence is a rented property then either to ensure payment of rent or secure any other suitable alternative accommodation which offers you the same security and facilities as earlier residence,
- (v) Not to give up the rights in the property in which you are residing without the permission of the court.
- (vi) Not to take any loan against the house/property in which you are residing or mortgage it or create any other financial liability involving the property,
- (vii) Any or all of the following orders for your safety requiring the person/s to-

(c) General Order:

(i) Stop the domestic violence complained/reported

(d) Special Orders:

- (i) Remove himself/stay away from your place of residence or workplace;
- (ii) Stop making any attempts to meet you,
- (iii) Stop calling you over phone or making any attempts to communicate with you by letter, e-mail etc.
- (iv) Stop talking to you about marriage or forcing you to meet a particular person of his/their choice for marriage;
- (v) Stay away from the school of your child/children, or any other place where you and your children visit;
- (vi) Surrender possession of firearms, any other weapon or any other dangerous substance





- (vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article,
- (viii) Not to consume alcohol or drugs with similar effect which led to domestic violence in the past.
- (ix) Any other measure required for ensuring your or your children's safety.
- (e) An order for interim monetary relief under sections 20 and 22 including
 - (i) Maintenance for you or your children,
 - (ii) Compensation for physical injury including medical expenses,
 - (iii) Compensation for mental torture and emotional distress,
 - (iv) Compensation for loss of earning,
 - (v) Compensation for loss caused by destruction, damage, removal of any property from your possession or control.
- **Note.** I. Any of the above relief can be granted on an interim basis, as soon as you make a complaint of domestic violence and present your application for any of the relief before the court.
 - II. A complaint of domestic violence made in Form I under the Act is called a "Domestic Incident Report")
 - 4. If you are a victim of domestic violence, you have the following rights:
 - (i) The assistance of a protection officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.
 - (ii) The assistance of protection officer, service providers or the officer in charge of the nearest police station to assist you in registering your complaint and filing an application for relief under sections 9 and 10.
 - (iii) To receive protection for you and your children from acts of domestic violence under section 18.
 - (iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing,
 - (v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities facilities therein, by you or your children under section 19.
 - (vi) To regain possession of your stridhan, jewellery, clothes, articles of daily use and other house hold goods under section 18.
 - (vii) To get medical assistance, shelter, counseling and legal aid under





sections 6, 7, 9 and 14.

- (viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.
- (ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic Violence under section 22.
- (x) To file complaint or applications for relief under the Act directly to the court under sections 12, 18, 19, 20, 21,22 and 23.
- (xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.
- (xii) To get copies of any statements recorded by any authority in connection with Domestic Violence.
- (xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.
- 5. The person providing the form should ensure that the details of all the registered service providers are entered in the manner and space provided below. The following is the list of service providers in the area;

Name of Organization	Service Provided	Contact Details

Continue the list on a separate sheet, if necessary......

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APPENDIX IV

FORM NO. 11, APPENDIX V: CODE OF CIVIL PROCEDURE, 1908

No. 11

ON A FOREIGN JUDGMENT

(Title)

A. B., the above-named plaintiff	, states	as	follows:-
----------------------------------	----------	----	-----------

1. On the......day of.....19......, at.....in the State [or Kingdom] of...., the.....

Court of that State [or Kingdom,] in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff...............rupees, with interest from the said date.

2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

R



APPENDIX V

FORM NO. 2, APPENDIX H: CODE OF CIVIL PROCEDURE, 1908

No. 2 NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL (Section 24.) To been made to this Court by......the.....in Suit No......of 19.....now pending in the Court of the.....at.......................in whichis plaintiff and.....is defendant, for the transfer of the suit for trial to the Court of theat fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it. Judge. ¹[No. 2A LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT (O. XVI r. 1.) Name and address Name of the party which proposes to of the witness Remarks] call the witness





APPENDIX VI

FORM NO. 6, APPENDIX E: CODE OF CIVIL PROCEDURE, 1908

APPENDIX E

$\begin{array}{c} No.\ 6 \\ \\ \text{APPLICATION FOR EXECUTION OF DECREE} \\ \\ (0.21,\ r.11.) \end{array}$

In the Court of

I, decree-holder, hereby apply for execution of the decree herein-below set forth:-

No. of Suit.	Names of parties.	[™] Date of Decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Amount of costs, if any, awarded.	Against whom to be executed.	Mode in which the assistance of the Court is required.
789 of 1897.	A.B. —Plaintiff. C.D. —Defendant.	October 11, 1897	No.	None	R.s 72-4 recorded on application, dated the 4th March, 1899	Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].	A sawarded in the decree 47 10 4 Subsequently incurred 8 2 0 Total 55 12 4	Against the defendant C.D.	[When attachment and sale of movable property is sought.] I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's movable property as per annexed list and paid to me. [When attachment and sale of immovable property is sought.] I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the cost of taking out this execution, be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.





I declare that what is stated herein is true to	the best of my know	vledge and belief.
	Signed	, decree-holder.
Dated the day of		
[When attachment and sale of immovable p	roperty is sought.]	
Description and Specification of I	Property	
The undivided one-third share of the judgment-debtor in a ho	ouse situated in the	village of,
value Rs. 40, and bounded as follows:—		
East by G's house; west by H's house; south by publ	ic road; north by p	private lane and J's
house.		
I declare that what is stated in the above	description is true	to the best of my
knowledge and belief, and so far as I have been able to ascert	ain the interest of	the defendant in the
property therein specified.		
	Signed	decree-holder

